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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

Walnuts Grown in California

CFR Correction

■ In Title 7 of the Code of Federal Regulations, parts 900 to 999, revised as of Jan. 1, 2004, on page 566, part 984 is corrected by reinstating the subpart heading and § 984.437 as follows:

Subpart—Administrative Rules and Regulations

§ 984.437 Methods for proposing names of additional candidates to be included on walnut growers' nomination ballots.

(a) Whenever the grower member position specified in § 984.35(a)(4) is assigned to growers who marketed their walnuts through independent handlers, any ten or more such growers who marketed an aggregate of 500 or more tons of walnuts through those handlers during the marketing year preceding the year in which Board nominations are held, may petition the Board to include on the nomination ballot the name of an eligible candidate for this position, and the name of an eligible candidate to serve as his alternate. The names of the eligible candidates proposed pursuant to this paragraph shall be included on the ballot together with the names of any incumbents who are willing to continue serving on the Board.

(b) Any ten or more growers eligible to serve in the grower member positions specified in § 984.35(a) (5) and (6) and who marketed an aggregate of 500 or more tons of walnuts through independent handlers during the marketing year preceding the year in which Board nominations are held, may petition the Board to include on the nomination ballot for a district the name of an eligible candidate for the applicable position, and the name of an eligible candidate to serve as his alternate. The names of the eligible candidates proposed pursuant to this paragraph shall be included on the ballot together with the names of any incumbents who are willing to continue serving on the Board.

(c) Petitions made pursuant to paragraphs (a) and (b) of this section shall be on forms supplied by the Board and filed no later than April 1 of the nomination year.

[41 FR 54476, Dec. 14, 1976]

[FR Doc. 04–55505 Filed 4–5–04; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3

[Docket No. 02–012–2]

RIN 0579–AB51

Animal Welfare; Transportation of Animals on Foreign Air Carriers

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Determination to regulate; confirmation of effective date.

SUMMARY: On October 10, 2003, the Animal and Plant Health Inspection Service published a determination to regulate. The determination to regulate notified the public of our intention to begin applying the Animal Welfare Act (AWA) regulations and standards for the humane transportation of animals in commerce to all foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia to ensure that any animal covered by the AWA, whether coming into, traveling from point to point in, or leaving the United States, its territories, possessions, or the District of Columbia, will be provided the protection of the AWA regulations and standards. In this document, we are responding to several issues raised in comments submitted by the public regarding our determination to regulate and are confirming the effective date specified in that document.

EFFECTIVE DATE: The effective date of the determination to regulate is confirmed as April 7, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1236; (301) 734–7586.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare regulations contained in 9 CFR chapter I, subchapter A, part 3 (referred to below as "the regulations") provide standards for the humane handling, care, treatment, and transportation, by regulated entities, of animals covered by the Animal Welfare Act (AWA, 7 U.S.C. 2131 *et seq.*). The regulations in part 3 are divided into six subparts, designated as subparts A through F, each of which contains facility and operating standards, animal health and husbandry standards, and transportation standards for a specific category of animals. These subparts consist of the following: Subpart A—dogs and cats; subpart B—guinea pigs and hamsters; subpart C—rabbits; subpart D—nonhuman primates; subpart E—marine mammals; and subpart F—warmblooded animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals. Transportation standards for dogs and cats are contained in §§ 3.13 through 3.19; for guinea pigs and hamsters, in §§ 3.35 through 3.41; for rabbits, in §§ 3.60 through 3.66; for nonhuman primates, in §§ 3.86 through 3.92; for marine mammals, in §§ 3.112 through 3.118; and for all other warmblooded animals, in §§ 3.136 through 3.142.

A carrier is defined in § 1.1 as "the operator of any airline, railroad, motor carrier, shipping line, or other enterprise which is engaged in the business of transporting animals for hire."

On October 10, 2003, we published in the **Federal Register** (68 FR 58575–58577, Docket No. 02–012–1) a determination to regulate and request for comments indicating that we intended to begin applying the Animal Welfare Act (AWA) regulations and standards for the humane transportation of animals in commerce to all foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia.

While these AWA regulations and standards have been enforced on U.S. air carriers, foreign air carriers, as a matter of policy, have not been asked to comply with the regulations, although some have done so voluntarily. Our determination to begin regulating foreign air carriers was intended to ensure that any animal covered by the AWA, whether coming into, traveling from point to point in, or leaving the United States, its territories, possessions, or the District of Columbia, will be provided the protection of the AWA regulations and standards. In that October 2003 document, we stated that our determination to regulate would become effective on April 7, 2004, unless substantial issues bearing on the effects of this action were brought to our attention.

We solicited comments for 60 days ending December 9, 2003. We received 15 comments by that date. They were from a zoo association, an animal welfare organization, a purebred dog association, and individuals. Most of the commenters favored our determination to regulate. One commenter, however, did raise several issues bearing on the effects of our action. These issues are discussed below.

The commenter questioned whether we had the legal authority for extending the AWA regulations and standards for the humane transport of animals in commerce to all foreign air carriers operating to and from the United States. The commenter characterized our determination to regulate as an extension of our jurisdiction.

The AWA, in section 2132, defines "commerce," in part, as trade, traffic, transportation, or other commerce between a place in a State and any place outside of such State, or between points within the same State but through any place outside thereof, or within any territory, possession, or the District of Columbia. The AWA regulations in 9 CFR 1.1 contain a similar definition of "commerce," but one that specifically includes commerce between a place in a State and a foreign country. Clearly, a foreign carrier transporting animals within the United States falls under these definitions of commerce and, therefore, may be regulated by the USDA under the provisions of the AWA.

The commenter also raised questions regarding which program of the Animal and Plant Health Inspection Service (APHIS) has jurisdiction in matters pertaining to the regulation of animals in transit. The commenter suggested that by regulating the movement of animals into and out of the United States, the Animal Care unit would, in effect, be regulating the importation and exportation of animals, a task that normally comes under the purview of APHIS' Veterinary Services program. In the view of the commenter, such duplication of responsibility is unwarranted, especially during a period of increased fiscal constraints.

We do not agree with the commenter's assertion that our determination to regulate will entail a duplication of responsibility by Animal Care and Veterinary Services. Imports and exports of various animals and animal products are regulated by APHIS's National Center for Import and Export (NCIE), a unit of the Veterinary Services program. NCIE's mission, as stated on the NCIE Web site, is to work with other Federal agencies, States, foreign governments, industry and professional groups, and others to enhance international trade and cooperation while preventing the introduction into the United States of dangerous and costly pests and diseases. Animal Care, on the other hand, sees its mission as providing leadership in establishing, disseminating, and enforcing acceptable standards of humane animal care and treatment. Thus, while NCIE's animal movement regulations are geared toward preventing the spread of animal diseases, those promulgated by Animal Care aim to ensure that animals are treated humanely while in transit.

The commenter also argued that extending our enforcement of the AWA regulations to foreign air carriers may result in jurisdictional overlap with the U.S. Fish and Wildlife Service (USFWS), which has the responsibility under the Lacey Act to ensure that humane and healthful shipping standards are maintained for animals in transit. Our October 2003 determination to regulate, the commenter noted, did not discuss how we will coordinate our expanded activities with the activities of the USFWS.

Animal Care acknowledges that, as a result of our determination to regulate, there may be a potential for some jurisdictional overlap between Animal Care and the USFWS in regard to regulating the air transport of warmblooded animals, including traditional zoo animals. Such overlap will be limited, however, to the air transport of warmblooded wildlife into the United States. While Animal Care regulates warmblooded animals, including dogs and cats and other domesticated animals, under the AWA, the USFWS regulates both warmblooded and non-warmblooded wildlife.

Animal Care and the USFWS have had overlapping jurisdiction over animals on domestic carriers under the AWA and the Lacey Act since the 1976 amendments to the AWA. Animal Care and the USFWS have established lines of communication to address issues that may arise. Whatever overlap has existed has not resulted in problems in ensuring the humane treatment of animals on U.S. domestic carriers or on the several major foreign carriers that have voluntarily registered themselves with APHIS and agreed to be subject to the AWA regulations, nor have there been complaints from the public or from agency personnel. Given this history, APHIS believes that extending enforcement of the AWA regulations to all foreign carriers operating within the United States, its territories, possessions, or the District of Columbia should not result in enforcement problems or interagency conflict.

The commenter also questioned the need for our determination to regulate on the grounds that the requirements of the International Air Transport Association (IATA) already apply to most, if not all, air carriers. The commenter further argued that rather than extending our enforcement of the regulations to foreign carriers, we should focus on bringing the AWA standards and regulations more into line with those of IATA. The commenter viewed IATA's species-specific requirements for crates and temperature ranges as preferable to what he characterized as our "one-size-fits-all" regulatory approach.

The IATA requirements are applicable throughout much of the world and would likely provide an effective means of ensuring the welfare of animals in transit if universally enforced. The USFWS has incorporated IATA container requirements for live animals into its regulations, "Standards for the Humane and Healthful Transport of Wild Mammals and Birds to the United States (50 CFR part 14, subpart J). However, IATA requirements are not otherwise Federal regulations and do not have the force of law. Except as provided by the USFWS regulations, adherence to IATA requirements is strictly voluntary and airlines are not subject to sanctions for noncompliance. The USDA regulations are mandatory for animals covered by the AWA, which, as noted, include warmblooded animals not covered by USFWS regulations, and violators may face civil or criminal penalties. We believe, therefore, that the AWA regulations offer such animals in transit more protection against mistreatment or neglect than do the IATA requirements.

The final concern expressed by this commenter was that APHIS' Animal Care unit does not have the fiscal or

human resources to adequately inspect foreign air carriers for AWA compliance. We believe that by being able to conduct inspections and to impose penalties and/or fines on any air carrier that does not comply with the AWA regulations for animals in transit, we can encourage most air carriers to place greater emphasis on ensuring that animals are transported humanely.

Therefore, for the reasons given in our earlier determination to regulate and in this document, we are confirming April 7, 2004, as the date we intend to begin applying the AWA regulations and standards for the humane transportation of animals in commerce to all foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this determination to regulate have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0247.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this determination to regulate, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 1st day of April, 2004.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–7738 Filed 4–5–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–45–AD; Amendment 39–13471; AD 2004–03–27]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332C, L, and L1 Helicopters; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects Airworthiness Directive (AD) 2004–03–27 for the Eurocopter France Model AS332C, L, and L1 helicopters that was published in the **Federal Register** on February 13, 2004 (69 FR 7113). The AD contains an incorrect AD number. In all other respects, the original document remains the same.

DATES: Effective March 19, 2004.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The FAA issued a final rule AD 2004–03–27, on January 30, 2004 (69 FR 7113, February 13, 2004). The following correction is needed:

The AD number on page 7114 is incorrectly listed as 2002–SW–45–AD, which is the AD Docket Number; the correct AD number is 2004–03–27. Therefore, the AD number needs correcting.

Since no other part of the regulatory information has been revised, the final rule is not being republished.

Correction of the Publication

■ Accordingly, the publication on February 13, 2004 of the final rule (AD 2004–03–27), which was the subject of FR Doc. 04–2782, is corrected as follows:

§ 39.13 [Corrected]

■ On page 7114, in the second column, the AD number listed as "2002–SW–45–AD" that appears in bold text just before "Eurocopter France," the manufacturer name, is corrected to read "2004–03–27."

Issued in Fort Worth, Texas, on March 29, 2004.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–7618 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–226–AD; Amendment 39–13556; AD 2004–07–12]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 airplanes. For some airplanes, this action requires replacing one 3-phase limiter block assembly, 6 current limiters, and hardware for 9 electrical cables with new parts. For other airplanes, this action requires inspecting 6 current limiters and 3 spare current limiters and replacing any defective current limiters with new current limiters. This action is necessary to prevent overheating of the terminal studs on the 3-phase limiter blocks and associated current limiters, which could cause a fire in the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective May 11, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 11, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 airplanes was published in the **Federal Register** on January 7, 2004 (69 FR 900). For some airplanes, that action proposed to require replacing one 3-phase limiter block assembly, 6 current limiters, and hardware for 9 electrical cables with new parts. For other airplanes, that action proposed to require inspecting 6 current limiters and 3 spare current limiters and replacing any defective current limiters with new current limiters.

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.

Explanation of Change to Paragraph (e) of the Proposed AD

Paragraph (e) of proposed AD states, "Although the service bulletin referenced in this AD specifies that certain information is to be submitted to the FAA, this AD does not include such requirements." The proposed AD references two service bulletins as the appropriate sources for accomplishing the required actions. Our intent was to refer specificially to McDonnell Douglas Alert Service Bulletin MD90–24A031, Revision 01, dated February 28, 2001, in paragraph (e). Also, that service bulletin does not specify to submit certain information to the FAA, but rather to the airplane manufacturer "for FAA accountability purposes." Therefore, we have revised paragraph (e) of the final rule to clarify these points.

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 29 airplanes in the worldwide fleet which are listed in McDonnell Douglas Alert Service Bulletin MD90–24A031, Revision 01, dated February 28, 2001. The FAA estimates that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the actions required in paragraph (b) of this AD, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the actions required in paragraph (b) of this AD on U.S. operators is estimated to be $5,655, or $195 per airplane.

There are approximately 4 airplanes in the worldwide fleet which are listed in McDonnell Douglas Alert Service Bulletin MD90–24A031, Revision 01, dated February 28, 2001, and are also listed as Group 1 airplanes in McDonnell Douglas Alert Service Bulletin MD90–24A043, Revision 01, dated March 12, 2001. None of those airplanes are on the U.S. registry.

There are approximately 5 airplanes in the worldwide fleet which are listed as Group 2 airplanes in McDonnell Douglas Alert Service Bulletin MD90–24A043, Revision 01, dated March 12, 2001. The FAA estimates that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the actions required in paragraph (c) of this AD, and that the average labor rate is $65 per work hour. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. Based on these figures, the cost impact of the actions required in paragraph (c) of this AD on U.S. operators is estimated to be $195.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–07–12 McDonnell Douglas: Amendment 39–13556. Docket 2001–NM–226–AD.

Applicability: Model MD–90–30 airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90–24A031, Revision 01, dated February 28, 2001, or McDonnell Douglas Alert Service Bulletin MD90–24A043, Revision 01, dated March 12, 2001; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the terminal studs on the 3-phase limiter blocks and associated current limiters, which could cause a fire in the airplane, accomplish the following:

Inspection and Replacement

(a) For those airplanes listed as Group 1 airplanes in McDonnell Douglas Alert Service Bulletin MD90–24A043, Revision 01, dated March 12, 2001, which are also listed in McDonnell Douglas Alert Service Bulletin MD90–24A031, Revision 01, dated February 28, 2001: Within 6 months after the effective date of this AD, accomplish the following actions:

(1) Inspect the 3 spare current limiters located in the electrical power center (EPC) in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD90–24A043, Revision 01, dated March 12, 2001. If the inspection

reveals that any of the current limiters located in the electrical power unit are defective, before further flight replace the defective current limiter(s) with new current limiter(s) in accordance with the alert service bulletin.

(2) Prior to or concurrent with accomplishment of paragraph (a)(1) of this AD, accomplish the following actions in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A031, Revision 01, dated February 28, 2001:

(i) Replace the 3-phase limiter block assembly and associated clear cover of the EPC with a serialized 3-phase limiter block assembly and a new clear cover.

(ii) Replace the 6 current limiters and attaching parts on the limiter block with new current limiters and attaching parts.

(iii) Replace hardware for 9 electrical cables attached to the limiter block with new attaching hardware.

Replacement

(b) For those airplanes listed in McDonnell Douglas Alert Service Bulletin MD90–24A031, Revision 01, dated February 28, 2001: Within 6 months after the effective date of this AD, accomplish the following actions in accordance with the Accomplishment Instructions of the alert service bulletin:

(1) Replace the 3-phase limiter block assembly and associated clear cover of the EPC with a serialized 3-phase limiter block assembly and a new clear cover.

(2) Replace the 6 current limiters and attaching parts on the limiter block with new current limiters and attaching parts.

(3) Replace hardware for 9 electrical cables attached to the limiter block with new attaching hardware.

Other Inspection

(c) For those airplanes listed as Group 2 airplanes in McDonnell Douglas Alert Service Bulletin MD90–24A043, Revision 01, dated March 12, 2001: Within 6 months after the effective date of this AD, accomplish the following actions in accordance with the Accomplishment Instructions of the alert service bulletin.

(1) Inspect the 6 current limiters and attaching hardware on the 3-phase limiter blocks and the 3 spare current limiters located in the EPC to determine whether any of the current limiters are defective.

(2) If the inspection required by paragraph (c)(1) of this AD reveals that any of the current limiters are defective, before further flight replace the defective current limiters with new current limiters, in accordance with Figure 1 of the Accomplishment Instructions.

Parts Installation

(d) As of the effective date of this AD, no person shall install on any airplane a Tri-Star 3-phase limiter block assembly having part number (P/N) C–1301–3 or a Burndy 3-phase limiter block assembly having P/N F6H–2, unless that 3-phase limiter block assembly has serial number 3015 or higher.

Information Submission

(e) Although McDonnell Douglas Alert Service Bulletin MD90–24A031, Revision 01, dated February 28, 2001, referenced in this AD specifies that certain information is to be submitted to the airplane manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

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

Incorporation by Reference

(g) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A043, Revision 01, dated March 12, 2001; and McDonnell Douglas Alert Service Bulletin MD90–24A031, Revision 01, dated February 28, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on May 11, 2004.

Issued in Renton, Washington, on March 22, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7350 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–262–AD; Amendment 39–13561; AD 2004–07–17]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all CASA Model C–212 series airplanes, that requires rework of the nose landing gear (NLG); modification of the hydraulic steering system; a test of the cable tension for the nosewheel steering system when abnormal vibration occurs, and adjustment of the cable tension, if necessary; and a revision to the Limitations section of the airplane flight manual to include certain procedures to be performed during the takeoff run. This action is necessary to prevent failure of the auxiliary landing gear direction system, which could result in abnormal vibrations during takeoff and landing runs, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective May 11, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 11, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; 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 CASA Model C–212 series airplanes was published in the **Federal Register** on February 6, 2004 (69 FR 5762). That action proposed to require rework of the nose landing gear (NLG); modification of the hydraulic steering system; a test of the cable tension for the nosewheel steering system when abnormal vibration occurs, and adjustment of the cable tension, if necessary; and a revision to the Limitations section of the airplane flight manual to include certain procedures to be performed during the takeoff run.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 27 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the rework of the NLG; and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $10,530, or $390 per airplane.

We estimate that it will take approximately 92 work hours per airplane to accomplish the modification of the hydraulic steering system. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $161,460, or $5,980 per airplane.

We estimate that it will take approximately 1 work hour per airplane to revise the Limitations section of the airplane flight manual. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $1,755, or $65 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–07–17 Construcciones Aeronauticas, S.A. (CASA): Amendment 39–13561. Docket 2002–NM–262–AD.

Applicability: All Model C–212 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the auxiliary landing gear direction system, which could result in abnormal vibrations during takeoff and landing runs, and consequent reduced controllability of the airplane, accomplish the following:

Rework and Modification

(a) Within 6 months after the effective date of this AD, accomplish the actions in paragraphs (a)(1) and (a)(2) of this AD in accordance with the applicable service bulletin.

(1) Rework the nose landing gear (NLG) in accordance with the Accomplishment Instructions of CASA Service Bulletin 212–32–21, Revision 2, dated November 10, 1987.

(2) Modify the hydraulic steering system of the NLG in accordance with the Instructions for Accomplishment of CASA Service Bulletin SB–212–32–22, Revision 2, dated July 28, 1997.

Tension Test and Adjustment

(b) Within 600 flight hours after any abnormal vibration of the nosewheel steering system occurs, test the cable tension of the nosewheel steering system. Adjust the tension, if necessary. Accomplish these actions in accordance with CASA COM 212–172, Revision 04, dated December 9, 2002; or CASA COM 212–173, Revision 3, dated February 22, 1995; as applicable.

Airplane Flight Manual Revision

(c) Within 6 months after the effective date of this AD, revise the Limitations Section of the Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Nose wheel malfunction during take-off run—Initiate or "perform" normal RTO procedures."

Note 1: When a statement identical to that in paragraph (c) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Parts Installation

(d) As of the effective date of this AD, no person may install on any airplane an NLG unless it has been reworked in accordance with paragraph (a)(1) of this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with CASA Service Bulletin 212–32–21, Revision 2, dated November 10, 1987; CASA Service Bulletin SB–212–32–22, Revision 2, dated July 28, 1997; CASA COM 212–172, Revision 04, dated December 9, 2002; and CASA COM 212–173, Revision 3, dated February 22, 1995; as applicable. CASA Service Bulletin 212–32–21, Revision 2, dated November 10, 1987, contains the following effective pages:

Page number	Revision level shown on page	Date shown on page
1	2	November 10, 1987.
2–24	1	June 4, 1986.

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 Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. 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 2: The subject of this AD is addressed in Spanish airworthiness directive 01/02, dated April 17, 2002.

Effective Date

(g) This amendment becomes effective on May 11, 2004.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7352 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–160–AD; Amendment 39–13560; AD 2004–07–16]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model C–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain CASA Model C–235 series airplanes, that requires modification of the electrical wiring of the rudder trim control unit. This action is necessary to prevent the flight crew from being able to inhibit the aural warning for the landing gear up. If the flight crew of the next flight or possibly of the same flight is unaware that the aural warning had been disabled, they could inadvertently land the airplane with the landing gear not down and locked. This action is intended to address the identified unsafe condition.

DATES: Effective May 11, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 11, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain CASA Model C–235 series airplanes was published in the **Federal Register** on February 6, 2004 (69 FR 5780). That action proposed to require modification of the electrical wiring of the rudder trim control unit.

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

The FAA estimates that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 7 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $40 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $495.

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:

2004–07016 Construcciones Aeronauticas, S.A. (CASA): Amendment 39–13560. Docket 2002–NM–160–AD.

Applicability: Model C–235 series airplanes, serial numbers C–006, C–007, C–010, C–012, C–018, C–029, C–030, C–032, C–033, and C–042; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the flight crew from being able to inhibit the aural warning for the landing gear up, and the possibility that the flight crew of the next flight or possibly of the same flight could inadvertently land the airplane with the landing gear not down and locked; accomplish the following:

Modification

(a) Within 6 months after the effective date of this AD, modify the electrical wiring of the rudder trim control unit per the Accomplishment Instructions of CASA Service Bulletin SB–235–27–20, dated March 7, 2001.

Alternative Methods of Compliance

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

Alternative Methods of Compliance

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

Incorporation by Reference

(d) The actions must be done in accordance with CASA Service Bulletin SB–235–27–20, dated March 7, 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 Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. 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 1: The subject of this AD is addressed in Spanish airworthiness directive 02/02, dated April 30, 2002.

Effective Date

(e) This amendment becomes effective on May 11, 2004.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7353 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–17–AD; Amendment 39–13559; AD 2004–07–15]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A321–111, –112, and –131 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD); applicable to certain Airbus Model A321–111, –112, and –131 series airplanes; that currently requires repetitive inspections to detect fatigue cracking in the area surrounding certain attachment holes of the forward pintle fittings of the main landing gear (MLG) and the actuating cylinder anchorage fittings on the inner rear spar; and repair, if necessary. The existing AD also provides for optional terminating action for the repetitive inspections. This amendment revises the inspection threshold and repetitive intervals for the currently required repetitive inspections. The actions specified in this AD are intended to detect and correct fatigue cracking on the inner rear spar of the wings, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective April 21, 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 21, 2004.

The incorporation by reference of Airbus Service Bulletin A320–57–1101, dated July 24, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 18, 1998 (63 FR 66753, December 3, 1998).

Comments for inclusion in the Rules Docket must be received on or before May 6, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–17–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 fax or the Internet must contain "Docket No. 2002–NM–17–AD" in the subject line and need not be submitted in triplicate. Comments sent via 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined 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.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On November 25, 1998, the FAA issued AD 98–25–05, amendment 39–10928 (63 FR 66753, December 3, 1998); applicable to certain Airbus Model A321–111, –112, and –131 series airplanes; to require repetitive inspections to detect fatigue cracking in the area surrounding certain attachment holes of the forward pintle fittings of the main landing gear (MLG) and the actuating cylinder anchorage fittings on the inner rear spar; and repair, if necessary. That AD also provides for optional terminating action for the repetitive inspections. That action was prompted by issuance of mandatory continuing airworthiness information by a civil airworthiness authority. The actions required by that AD are intended to detect and correct fatigue cracking on the inner rear spar of the wings, which could result in reduced structural integrity of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, Airbus has carried out a survey of the family fleet of Model A320 airplanes (which includes Model A321 series airplanes). The results of this survey indicate that the weight of fuel at landing and mean flight duration for in-service airplanes are higher than the figures defined for the analysis of fatigue-related tasks. These findings have led to an adjustment of the A320 family reference fatigue mission.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–57–1101, Revision 02, dated October 25, 2001. (The existing AD refers to the original issue of that service bulletin, dated July 24, 1997, as the acceptable source of service information for the actions required by that AD.) The procedures in Revision 02 are the same as those in Revision 01. However, per the survey results described previously, the recommended inspection thresholds and intervals for the inspections have been revised to be expressed in terms of both flight cycles and flight hours. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this service bulletin as mandatory and issued French airworthiness directive 2001–633(B), dated December 26, 2001, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France 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, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the

DGAC, 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 supersedes AD 98–25–05 to continue to require repetitive inspections to detect fatigue cracking in the area surrounding certain attachment holes of the forward pintle fittings of the MLG and the actuating cylinder anchorage fittings on the inner rear spar; and repair, if necessary. The AD also continues to provide optional terminating action for the repetitive inspections. This AD revises the initial inspection threshold to express it in terms of both flight cycles and flight hours, and reduces the repetitive inspection intervals. The actions are required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Operators should note that, in consonance with the findings of the DGAC, we have determined that the repetitive inspections required by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, we consider that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect cracking before it represents a hazard to the airplane.

Differences Between AD and Referenced Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of cracking conditions in the area surrounding certain attachment holes of the forward pintle fittings of the MLG, this AD requires the repair of the fatigue cracking to be accomplished in accordance with a method approved by either us or the DGAC (or its delegated agent). In light of the type of repair that will be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, we have determined that, for this AD, a repair approved by either us or the DGAC is acceptable for compliance with this AD.

Operators also should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for submitting a comment sheet related to service bulletin quality and a sheet recording compliance with the service bulletin, this AD does not require those actions. We do not need this information from operators.

Explanation of Changes to Part 39

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOC). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD. Therefore, paragraph (d) and Note 1 of AD 98–25–05 are not included in this AD, and paragraph (c) of AD 98–25–05 has been revised and included as paragraph (f) of this AD.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

The new requirements of this AD add no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 20 work hours to accomplish the required actions, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this AD would be $1,300 per airplane.

Should an operator elect to accomplish the optional terminating action that is provided by this AD action, it would take approximately 520 work hours to accomplish, at an average labor rate of $65 per work hour. The cost of required parts would be approximately $17,540 per airplane. Based on these figures, the cost impact of the optional terminating action would be $51,340 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and 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 2002–NM–17–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.

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 39–10928 (63 FR 66753, December 3, 1998), and by adding a new airworthiness directive (AD), amendment 39–13559, to read as follows:

2004–07–15 Airbus: Amendment 39–13559. Docket 2002–NM–17–AD. Supersedes AD 98–25–05, Amendment 39–10928.

Applicability: Model A321–111, –112, and –131 series airplanes; except those on which Airbus Modification 24977 has been accomplished during production, or on which Airbus Modification 26010 has been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking on the inner rear spar of the wings, which could result in reduced structural integrity of the airplane, accomplish the following:

Requirements of AD 98–25–05

Repetitive Inspections and Corrective Actions

(a) Prior to the accumulation of 20,000 total flight cycles, or within 120 days after December 18, 1998 (the effective date of AD 98–25–05, amendment 39–10928), whichever occurs later, perform an ultrasonic inspection to detect fatigue cracking in the area surrounding certain attachment holes of the forward pintle fittings of the main landing gear (MLG) and the actuating cylinder anchorage fittings on the inner rear spar, in accordance with Airbus Service Bulletin A320–57–1101, dated July 24, 1997; or Revision 02, dated October 25, 2001.

(1) If no cracking is detected, prior to further flight, repair the sealant in the inspected areas and repeat the ultrasonic inspections thereafter at intervals not to exceed 7,700 flight cycles, until paragraph (b) or (d) of this AD is accomplished.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

Optional Terminating Action

(b) Accomplishment of visual and eddy current inspections to detect cracking in the area surrounding certain attachment holes of the forward pintle fittings of the MLG and the actuating cylinder anchorage fittings on the inner rear spar; follow-on corrective actions, as applicable; and rework of the attachment holes; in accordance with Airbus Service Bulletin A320–57–1100, dated July 28, 1997, constitutes terminating action for the repetitive inspection requirements of this AD. If any cracking is detected during accomplishment of any inspection described in the service bulletin, and the service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

New Requirements of This AD

Repetitive Inspections for Airplanes Not Previously Inspected Per Paragraph (a)

(c) For airplanes on which the initial inspection required by paragraph (a) of this AD has not been accomplished as of the effective date of this AD: Accomplish the inspection required by paragraph (a) of this AD, at the earlier of the times specified in paragraphs (c)(1) and (c)(2) of this AD. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 5,500 flight cycles or 10,200 flight hours, whichever occurs first, until paragraph (b) of this AD is accomplished. Accomplishment of this paragraph eliminates the need to accomplish repetitive inspections at the intervals required by paragraph (a)(1) of this AD.

(1) Prior to the accumulation of 20,000 total flight cycles.

(2) Prior to the accumulation of 37,300 total flight hours, or within 120 days after the effective date of this AD, whichever occurs later.

Repetitive Inspections for Airplanes Previously Inspected Per Paragraph (a)

(d) For airplanes on which the initial inspection required by paragraph (a) of this AD has been accomplished as of the effective date of this AD, and no cracking was found: Do the next inspection at the earlier of the times specified in paragraphs (d)(1) or (d)(2) of this AD, and repeat the inspection thereafter at intervals not to exceed 5,500 flight cycles or 10,200 flight hours, whichever occurs first, until paragraph (b) of this AD is accomplished. Accomplishment of this paragraph terminates the repetitive inspections required by paragraph (a)(1) of this AD.

(1) Within 7,700 flight cycles since the most recent inspection.

(2) At the later of the times specified in paragraph (d)(2)(i) or (d)(2)(ii) of this AD:

(i) Within 5,500 flight cycles or 10,200 flight hours since the most recent inspection, whichever occurs first.

(ii) Within 120 days after the effective date of this AD.

Repair

(e) If any cracking is detected during any inspection required by paragraph (c) or (d) of this AD: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

No Reporting Requirement

(f) Although Airbus Service Bulletin A320–57–1101, Revision 02, dated October 25, 2001, specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

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

Incorporation by Reference

(h) Unless otherwise provided by this AD, the actions shall be done in accordance with Airbus Service Bulletin A320–57–1101, dated July 24, 1997; or Airbus Service Bulletin A320–57–1101, Revision 02, dated October 25, 2001.

(1) The incorporation by reference of Airbus Service Bulletin A320–57–1101, Revision 02, dated October 25, 2001; 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 Airbus Service Bulletin A320–57–1101, dated July 24, 1997; was approved previously by the Director of the Federal Register as of December 18, 1998 (63 FR 66753, December 3, 1998).

(3) Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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 1: The subject of this AD is addressed in French airworthiness directive 2001–633(B), dated December 26, 2001.

Effective Date

(h) This amendment becomes effective on April 21, 2004.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7354 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–60–AD; Amendment 39–13558; AD 2004–07–14]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–15, DC–9–31, and DC–9–32 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–15, DC–9–31, and DC–9–32 airplanes, that requires repetitive visual and x-ray inspections to detect cracks of the upper and lower corners and upper center of the door cutout of the aft pressure bulkhead; corrective actions, if necessary; and follow-on actions. For certain airplanes, this AD also requires modification of the ventral aft pressure bulkhead. This action is necessary to detect and correct fatigue cracks in the corners and upper center of the door cutout of the aft pressure bulkhead, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective May 11, 2004.

The incorporation by reference of a certain publication, as listed in the regulations, is approved by the Director of the Federal Register as of May 11, 2004.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 14, 2002 (67 FR 16987, April 9, 2002).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–15, DC–9–31, and DC–9–32 airplanes was published in the **Federal Register** on December 3, 2003 (68 FR 67618). That action proposed to require repetitive visual and x-ray inspections to detect cracks of the upper and lower corners and upper center of the door cutout of the aft pressure bulkhead; corrective actions, if necessary; and follow-on actions. For certain airplanes, that action proposed to require modification of the ventral aft pressure bulkhead.

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 13 airplanes of the affected design in the worldwide fleet. The FAA estimates that 7 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,275, or $325 per airplane.

For certain airplanes, it will take approximately between 21 and 26 work hours per airplane depending on the airplane configuration to accomplish the modification specified in McDonnell Douglas DC–9 Service Bulletin 53–165, Revision 3, dated May 3, 1989, at an average labor rate of $65 per work hour. Required parts will cost approximately between $3,470 and $11,831 per airplane, depending on the airplane configuration. Based on these figures, the cost impact of this modification on U.S. operators is estimated to be between $4,835, or $13,521 per airplane.

For certain airplanes, it will take approximately 9 work hours per airplane to accomplish the modification specified in McDonnell Douglas DC–9 Service Bulletin 53–157, Revision 1, dated January 7, 1985, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this modification on U.S. operators is estimated to be $585 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–07–14 McDonnell Douglas: Amendment 39–13558. Docket 2003–NM–60–AD.

Applicability: Model DC–9–15, DC–9–31, and DC–9–32 airplanes, manufacturer's fuselage numbers 0030, 0094, 0220, 0221, 0863, 0900, 0901, 0913, 0914, 0918, 0923, 0926, and 0930; certificated in any category; equipped with a floor level hinged (ventral) door of the aft pressure bulkhead; as listed in McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003; except for those airplanes on which the modification required by paragraph (d) or (e) of AD 96–10–11, amendment 39–9618, or paragraph K. of AD 85–01–02 R1, amendment 39–5241, has been done.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracks in the corners and upper center of the door cutout of the aft pressure bulkhead, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Visual and X–Ray Inspection

(a) For airplanes on which the modification has not been accomplished per paragraph (i) of this AD: Except as provided by paragraph (j) of this AD, prior to the accumulation of 15,000 total landings, or within 4,000 landings after the effective date of this AD, whichever occurs later, do a visual inspection and an x-ray inspection to detect cracks of the upper and lower corners and upper center of the door cutout of the aft pressure bulkhead, per the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003.

No Crack Detected: Repetitive Inspections

(b) If no crack is detected during any inspection required by paragraph (a) of this AD, do the action specified in either paragraph (b)(1) or (b)(2) of this AD per the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003, as applicable.

(1) If interim preventive repairs have been performed per the service bulletin; AD 85–01–02 R1, or AD 96–10–11: Do a visual inspection and an eddy current inspection at the times specified in the service bulletin. Repeat the applicable repetitive inspections thereafter at intervals not to exceed the times specified in the service bulletin, until accomplishment of the action required by paragraph (d) or (i) of this AD.

(2) If interim preventive repairs have not been performed per the service bulletin, do either paragraph (b)(2)(i) or (b)(2)(ii) of this AD:

(i) Before further flight, install an interim preventive repair identified in Conditions I through XLIII inclusive, excluding Conditions XXI, XXXVII, and XXXVIII (not used at this time), per the service bulletin. At the times specified in the service bulletin, do a visual inspection and an eddy current inspection. At intervals not to exceed the times specified in the service bulletin, repeat the visual and eddy current inspections until accomplishment of the action specified in paragraph (d) or (i) of this AD; or

(ii) At intervals not to exceed the times specified in the service bulletin, repeat the visual inspection and x-ray inspection required by paragraph (a) of this AD, until accomplishment of the action specified in paragraph (d) or (i) of this AD.

Any Crack Detected: Corrective Actions and Repetitive Inspections

(c) If any crack is detected during any inspection required by paragraph (a) or (b) of this AD, do the actions specified in paragraphs (c)(1) and (c)(2) of this AD per the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003.

(1) Before further flight, do the applicable corrective actions (*i.e.*, modification of the bulkhead; trim forward facing flange; stop drill ends of cracks; install repair kit; replacement of cracked part with new parts; and install additional doublers) identified in Conditions I through XLIII inclusive, excluding Conditions XXI, XXXVII, and XXXVIII (not used at this time), of the Accomplishment Instructions of the service bulletin; and

(2) At the times specified in the Accomplishment Instructions of the service bulletin, do the applicable repetitive inspections, until accomplishment of the action specified in paragraph (d) or (i) of this AD.

Concurrent Requirements

(d) Except as provided by paragraph (j) of this AD, modify the ventral aft pressure bulkhead structure by accomplishing all actions specified in the Accomplishment Instructions of McDonnell Douglas DC–9 Service Bulletin 53–165, Revision 3, dated May 3, 1989, per the service bulletin; at the applicable time specified in paragraph (d)(1), (d)(2), or (d)(3) of this AD.

(1) For airplanes on which the bulkhead modification specified in McDonnell Douglas DC–9 Service Bulletin 53–139, dated September 26, 1980; or Revision 1, dated April 30, 1981; has been done, except as provided by paragraph (d)(3) of this AD: Modify within 15,000 landings after accomplishment of the bulkhead modification, or within 4,000 landings after the effective date of this AD, whichever occurs later. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of paragraphs (b) and (c)(2) of this AD.

(2) For airplanes on which the production equivalent of the modification specified in paragraph (d)(1) of this AD has been done before delivery, except as provided by paragraph (d)(3) of this AD: Modify before the accumulation of 15,000 total landings, or within 4,000 landings after the effective date of this AD, whichever occurs later. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of paragraphs (b) and (c)(2) of this AD.

(3) For airplanes listed in McDonnell Douglas DC–9 Service Bulletin 53–165, Revision 3, dated May 3, 1989, that are specified in paragraph (f) of this AD: Modify in conjunction with the requirements of paragraph (f) of this AD, or within 18 months after accomplishment of the requirements of paragraph (f) of this AD.

(e) Modification before the effective date of this AD per McDonnell Douglas DC–9 Service Bulletin 53–165, dated January 31, 1983; Revision 1, dated February 20, 1984; or Revision 2, dated August 29, 1986; is considered acceptable for compliance with the requirements of paragraph (d) of this AD.

Modification: Ventral Aft Pressure Bulkhead

(f) For Model DC–9–30 and "50 series airplanes, and C–9 airplanes, as listed in McDonnell Douglas DC–9 Service Bulletin 53–157, Revision 1, dated January 7, 1985: Except as provided by paragraph (j) of this AD, within 18 months after the effective date of this AD, modify the ventral aft pressure bulkhead per the service bulletin.

(g) Modification before the effective date of this AD per McDonnell Douglas DC–9 Service Bulletin 53–157, dated August 11, 1981, is considered acceptable for compliance with the requirements of paragraph (f) of this AD.

Compliance With AD 85–01–02 R1

(h) Accomplishment of the visual and x-ray inspections required by paragraph (a) of this AD constitutes terminating action for the repetitive inspection requirements of AD 85–01–02 R1.

Terminating Modification

(i) Accomplishment of the modification (reference McDonnell Douglas DC–9 Service Bulletin 53–166) required by paragraph (d) or (e) of AD 96–10–11 (which references "DC–9/MD–80 Aging Aircraft Service Action Requirements Document" (SARD), McDonnell Douglas Report No. MDC K1572, Revision A, dated June 1, 1990; or Revision B, dated January 15, 1993; as the appropriate source of service information for accomplishing the modification) terminates the repetitive inspection requirements of paragraphs (b) and (c) of this AD.

Exception to Inspections and Modifications

(j) As of the effective date of this AD, the inspections and modifications required by this AD do not need to be done during any period that the airplane is operated without cabin pressurization and a placard is

installed in the cockpit in full view of the pilot that states the following:

"OPERATION WITH CABIN PRESSURIZATION IS PROHIBITED."

Actions Accomplished Per Previous Issue of Service Bulletin

(k) Inspections, corrective actions, and follow-on actions accomplished before the effective date of this AD per McDonnell Douglas Service Bulletin DC9 -53–137, Revision 07, dated February 6, 2001; or McDonnell Douglas Service Bulletin DC9–53–137, Revision 08, dated November 22, 2002; are considered acceptable for compliance with the corresponding action specified in this AD.

Credit for AD 2002–07–06, Amendment 39–12700

(l) Accomplishment of the actions specified in AD 2002–07–06 is acceptable for compliance with the requirements of this AD.

Submission of Information to Manufacturer Not Required

(m) Although McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003, specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(n)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

(2) AMOCs approved previously in accordance with AD 85–01–02 R1, amendment 39–4978; or AD 96–10–11, amendment 39–9618; are approved as AMOCs for paragraph (a) or (c) of this AD, as appropriate.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Engineering Representative (DER) who has been authorized by the Manager, Los Angeles ACO, to make such findings.

Incorporation by Reference

(o) Unless otherwise specified in this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003; McDonnell Douglas DC–9 Service Bulletin 53–165, Revision 3, dated May 3, 1989; and McDonnell Douglas DC–9 Service Bulletin 53–157, Revision 1, dated January 7, 1985; as applicable.

(1) The incorporation by reference of McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 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 McDonnell Douglas DC–9 Service Bulletin 53–165, Revision 3, dated May 3, 1989; and McDonnell Douglas DC–9 Service Bulletin 53–157, Revision 1, dated January 7, 1985; was approved previously by the Director of the Federal Register as of May 14, 2002 (67 FR 16987, April 9, 2002).

(3) Copies may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(p) This amendment becomes effective on May 11, 2004.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7297 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–287–AD; Amendment 39–13555; AD 2004–07–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–400ER Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 767–400ER series airplanes, that requires repetitive high frequency eddy current inspections of the aft lower lugs of the deflection control track of the outboard flap for cracks, and replacement of any cracked deflection control track with a new track assembly. This action is necessary to prevent fatigue cracking in the aft lower lug run-out region of the deflection control track. Fatigue cracking of the deflection control track, if not detected and corrected in a timely manner, could result in the loss of the secondary load path for the outboard flap, resulting in the loss of the outboard flap and consequent reduced controllability of the airplane in the event that the primary load path also fails. This action is intended to address the identified unsafe condition.

DATES: Effective May 11, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of May 11, 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 767–400ER series airplanes was published in the **Federal Register** on October 1, 2003 (68 FR 56598). That action proposed to require repetitive high frequency eddy current inspections of the aft lower lugs of the deflection control track of the outboard flap for cracks, and replacement of any cracked deflection control track with a new track assembly.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Change Compliance Time

One commenter requests that the proposed repairs be deferred until the next major base visit. The commenter states that the compliance time of "before the accumulation of 12,000 total flight cycles" in the proposed AD would cause maintenance program issues. The commenter states that the inspections and repairs will create an undue burden to the airline operators due to parts availability and the costs affiliated with immediate repair of a cracked deflection control track.

The FAA does not agree with the commenter's request to change the compliance time. In developing an appropriate compliance time for this action, we considered the safety implications, parts availability, and normal maintenance schedules for the timely accomplishment of the inspections and repairs. We have determined, based on fatigue analysis by

the manufacturer, that a compliance time of "before the accumulation of 12,000 total flight cycles" will ensure an acceptable level of safety. We also provided a grace period of 1,200 flight cycles, in order to allow the operators to align the inspections with regular maintenance checks. Last, due to safety implications and the consequences associated with continued service without proper repair, repairs must be made before further flight.

Model 767–400ER Not Subject to Proposed AD

The commenter states that all of the cracked deflection control tracks were reported on Model 767–300 series airplanes and no reports have been made for Model 767–400ER series airplanes. The commenter also states that the utilization for the Model 767–300 series airplanes and Model 767–400ER series airplanes are often completely different.

We infer from the commenter's statement, that the Model 767–400ER deflection control tracks should not be subject to the proposed AD. While we do agree that the airplanes operate differently and cracking has only been found on Model 767–300 series airplanes, we do not agree with the commenter that Model 767–400ER deflection control tracks should not be subject to this AD. Based on fatigue analysis and similar construction, we find sufficient data exists to establish the probability of the deflection control track cracking on the Model 767–400ER series airplanes. Since the deflection control track acts as a secondary load path on Model 767–400ER series airplanes and not on Model 767–300 series airplanes, this AD is limited to Model 767–400ER series airplanes only.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 38 airplanes of the affected design in the worldwide fleet. The FAA estimates that 38 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required 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 $7,410, or $195 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:

2004–07–11 Boeing: Amendment 39–13555. Docket 2002–NM–287–AD.

Applicability: All Model 767–400ER series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the aft lower lug run-out region of the deflection control track, which could result in the loss of the secondary load path for the outboard flap, resulting in loss of the outboard flap and consequent reduced controllability of the airplane in the event that the primary load path also fails, accomplish the following:

Initial Inspection

(a) Before the accumulation of 12,000 total flight cycles, or within 1,200 flight cycles after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection for cracks in the aft lower lug of the deflection control track on the outboard flap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0183, dated May 9, 2002.

Repetitive Inspections

(b) If no crack is detected during any HFEC inspection required in paragraph (a) of this AD, repeat the inspection at intervals not to exceed 1,200 flight cycles.

Corrective Action

(c) If any crack is detected during any HFEC inspection required by paragraph (a) of this AD, before further flight, replace the deflection control track with a new track assembly, in accordance with the Accomplishment Instructions in Boeing Alert Service Bulletin 767–27A0183, dated May 9, 2002. Within 12,000 flight cycles following the replacement, perform the HFEC inspection specified in paragraph (a) of this AD, and repeat inspections as specified in paragraph (b) of this AD.

Alternative Methods of Compliance

(d) 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

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 767–27A0183, dated May 9, 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

(f) This amendment becomes effective on May 11, 2004.

Issued in Renton, Washington, on March 22, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7351 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–25–AD; Amendment 39–13567; AD 2004–07–23]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires replacement of certain assistor springs and bearings with certain new assistor springs and bearings. This action is necessary to prevent possible collapse of a main landing gear upon landing and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective May 11, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of May 11, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. 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 certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on February 6, 2004 (69 FR 5792). That action proposed to require replacement of certain assistor springs and bearings with certain new assistor springs and bearings.

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.

Explanation of Change Made to the Final Rule

The FAA has revised the citation format for Saab Service Bulletin 340–32–130, dated April 28, 2003, referenced in paragraph (a) of this final rule, to adhere to the Office of the Federal Register's guidelines for materials incorporated by reference.

Conclusion

After careful review of the available data the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 288 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. Required parts will cost approximately $750 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $253,440, or $880 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:

2004–07–23 Saab Aircraft AB: Amendment 39–13567. Docket 2003–NM–25–AD.

Applicability: Model SAAB SF340A series airplanes with serial numbers 004 through 159 inclusive, and Model SAAB 340B series airplanes with serial numbers 160 through 459 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible collapse of a main landing gear upon landing and consequent reduced controllability of the airplane, accomplish the following:

Replacements

(a) Within the compliance times listed in Table 1 of this AD, perform the actions specified in paragraphs (a)(1) and (a)(2) of

this AD per the Accomplishment Instructions of Saab Service Bulletin 340–32–130, dated April 28, 2003; including Attachments 1 and 2, Revision 1, dated April 2003; and Attachments 3 and 4, dated April 2003.

TABLE 1—COMPLIANCE TIMES

Within—	If—
6 months after the effective date of this AD.	Saab Service Bulletin 340–32–126, dated December 18, 2002, has been performed.
3 months after the effective date of this AD.	Saab Service Bulletin 340–32–126, dated December 18, 2002, has not been performed.

(1) Replace the assistor springs of the main landing gear with new assistor springs, per Part 1 of the service bulletin.

(2) Replace the bearings of the main landing gear with new bearings, per Part 2 of the service bulletin.

Parts Installation

(b) As of the effective date of this AD, no person may install an assistor spring, part number AIR125132 or AIR131330, on any airplane.

Alternative Methods of Compliance

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

Incorporation by Reference

(d) The replacements shall be done in accordance with Saab Service Bulletin 340–32–130, dated April 28, 2003; including Attachments 1 and 2, Revision 1, dated April 2003; and Attachments 3 and 4, dated April 2003. This document contains the following effective pages:

Revision level page number	Date shown on page	Shown on page
1–6	Original	April 28, 2003
	Attachment 1	
1–3	1	April 2003
	Attachment 2	
1–3	1	April 2003
	Attachment 3	
1–3	Original	April 2003
	Attachment 4	
1–3	Original	April 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 Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. 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 1: The subject of this AD is addressed in Swedish airworthiness directive No 1–191, dated April 28, 2003.

Effective Date

(e) This amendment becomes effective on May 11, 2004.

Issued in Renton, Washington, on March 26, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7472 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–51–AD; Amendment 39–13568; AD 2004–07–24]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900 EX Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900 EX series airplanes, that requires installing a shield plate over the tank structure above the Stormscope antenna and replacing the Stormscope antenna plug connector with a new connector. This action is necessary to prevent puncture of the fuel tank in the event of a belly landing, which could result in a post-landing fire if fuel leaking from the tank makes contact with the sparks from the airplane sliding on the ground. This action is intended to address the identified unsafe condition.

DATES: Effective May 11, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 11, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900 EX series airplanes was published in the **Federal Register** on February 6, 2004 (69 FR 5773). That action proposed to require installing a shield plate over the tank structure above the Stormscope antenna and replacing the Stormscope antenna plug connector with a new connector.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 394 Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900 EX series airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts are provided free of charge by the manufacturer. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $204,880, or $520 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:

2004–07–24 Dassault Aviation: Amendment 39–13568. Docket 2003–NM–51–AD.

Applicability: Model Mystere-Falcon 50 series airplanes with a Stormscope antenna installed between frames 22 and 23 by Dassault modification M2208 or by a DFJ Little Rock modification, except on airplanes on which Dassault modification M2838 has been performed; and Model Mystere-Falcon 900 and Falcon 900EX series airplanes with a Stormscope antenna installed between frames 23 and 24 by Dassault modification M2993 or by a DFJ Little Rock modification, except airplanes on which Dassault modification M3498 has been performed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent puncture of the fuel tank in the event of a belly landing, which could result in a post-landing fire if fuel leaking from the tank makes contact with the sparks from the airplane sliding on the ground, accomplish the following:

Install and Replace

(a) Within 25 months after the effective date of this AD, install a shield plate over the tank structure above the Stormscope antenna, and replace the Stormscope antenna plug connector with a new connector, in accordance with the Accomplishment Instructions of the applicable service bulletin listed in Table 1 of this AD.

TABLE 1.—APPLICABLE SERVICE BULLETINS

For Model—	Dassault Service Bulletin—
Mystere-Falcon 50 series airplanes.	F50–404, dated November 6, 2002.
Mystere-Falcon 900 series airplanes.	F900–293, dated November 13, 2002.
Falcon 900EX series airplanes.	F900EX–158, dated November 13, 2002.

Reporting Difference

(b) Although the service bulletins referenced in this AD specify to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

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

Incorporation by Reference

(d) The actions shall be done in accordance with the applicable service bulletin listed in Table 2 of this AD.

TABLE 2.—APPLICABLE SERVICE BULLETINS INCORPORATED BY REFERENCE

Dassault Service Bulletin—	Revision level—	Date—
F50–404	Original	November 6, 2002.
F900–293	Original	November 13, 2002.
F900EX–158	Original	November 13, 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 Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. 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 1: The subject of this AD is addressed in French airworthiness directive 2002–569(B), dated November 13, 2002.

Effective Date

(e) This amendment becomes effective on May 11, 2004.

Issued in Renton, Washington, on March 26, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7473 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–236–AD; Amendment 39–13565; AD 2004–07–21]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Model Astra SPX and 1125 Westwind Astra series airplanes, that requires detailed inspections and resistance measurements of the starter generator electrical cables of both engines to detect damage, and replacement of the electrical cable and cable support if any damage is found. This amendment also requires eventual replacement of the cable support. This action is necessary to prevent chafing of the starter generator cable, which could result in electrical arcing in the vicinity of a fuel line, and possible fire or explosion. This action is intended to address the identified unsafe condition.

DATES: Effective May 11, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of May 11, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. 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: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Model Astra SPX and 1125 Westwind Astra series airplanes was published in the **Federal Register** on January 7, 2004 (69 FR 895). That action proposed to require detailed inspections and resistance measurements of the starter generator electrical cables of both engines to detect damage, and replacement of the electrical cable and cable support if any damage is found. That action also proposed to require eventual replacement of the cable support.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 55 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the inspection and measurement; 4 hours per airplane to accomplish the replacement of the cable support if no damage is found; and 12 hours per airplane to accomplish the replacement of the cable and cable support if any damage is found. The average labor rate is $65 per work hour. All necessary parts will be provided by the manufacturer free of charge. Based on these figures, the cost impact of the proposed inspection and measurement on U.S. operators is estimated to be $7,150, or $130 per airplane, per inspection cycle. For airplanes on which no damage is found, the cost impact of the proposed replacement on U.S. operators is estimated to be $14,300, or $260 per airplane. For airplanes on which damage is found, the cost impact of the proposed replacement on U.S. operators is estimated to be $42,900, or $780 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–07–21 Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Amendment 39–13565. Docket 2002–NM–236–AD.

Applicability: Model Astra SPX and 1125 Westwind Astra series airplanes, serial numbers 004 through 141 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the starter generator cable, which could result in electrical arcing in the vicinity of a fuel line, and possible fire or explosion, 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 Gulfstream 1125 Astra and Astra SPX Service Bulletin 100–54–252, dated April 24, 2002.

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

Initial and Repetitive Inspections

(b) Within 250 flight hours after the effective date of this AD, perform a detailed inspection of the starter generator electrical cables of both engines to detect damage, per the service bulletin.

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 if No Damage Is Found

(c) If no damage is found during any inspection required by paragraph (b) of this AD: Before further flight, measure the insulation resistance between the starter generator cable and firewall support in accordance with the service bulletin.

(1) If the measured resistance is less than 20 megaohms: Before further flight, replace the electrical cables and cable support per paragraph (d) of this AD.

(2) If the measured resistance is greater than or equal to 20 megaohms, repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 250 flight hours, including the follow-on measurement in paragraph (c), as applicable, until the applicable replacement required by paragraph (d) or (e) of this AD is accomplished.

Replacement if Any Damage Is Found

(d) If any damage is found during any inspection required by paragraph (b), or if the insulation resistance as required to be measured by paragraph (c) of this AD is less than 20 megaohms: Before further flight, replace the electrical cables and cable support per Part C of the service bulletin. This replacement terminates the repetitive inspections required by paragraph (b) and the measurement required by paragraph (c) of this AD, for that affected engine.

Replacement if No Damage Is Found

(e) If no damage is found during any inspection required by paragraph (b), or if the insulation resistance as required to be measured by paragraph (c) of this AD is greater than or equal to 20 megaohms: Within 5 years after the effective date of this AD, or at the next engine removal, whichever comes first, replace the cable support per Part B of the service bulletin. This replacement terminates the repetitive inspections required by paragraph (b) and the measurement required by paragraph (c) of this AD, for that affected engine.

Alternative Methods of Compliance

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

Incorporation by Reference

(g) The actions shall be done in accordance with Gulfstream 1125 Astra and Astra SPX Service Bulletin 100–54–252, dated April 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 Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. 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 2: The subject of this AD is addressed in Israeli airworthiness directive 54–02–06–12, dated July 4, 2002.

Effective Date

(h) This amendment becomes effective on May 11, 2004.

Issued in Renton, Washington, on March 26, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7301 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–157–AD; Amendment 39–13562; AD 2004–07–18]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, that requires replacement of landing gear control handle components with new, improved components. This action is necessary to prevent an inability to lower or retract the landing gear using the landing gear control handle, which could result in use of Emergency Procedures using the landing gear manual release. This action is intended to address the identified unsafe condition.

DATES: Effective May 11, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of May 11, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 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: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes was published in the **Federal Register** on January 29, 2004 (69 FR 4261). That action proposed to require replacement of landing gear control handle components with new, improved components.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 184 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the replacement, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $11,960, 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:

2004–07–18 Bombardier, Inc. (Formerly Canadair): Amendment 39–13562. Docket 2003–NM–157–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7375 through 7632 inclusive, certificated in any category; equipped with landing gear control handle assemblies, Canadair Part Number (P/N) 601R50967–7 (Vendor P/N 7–45502–1) or Canadair P/N 601R50967–9 (Vendor P/N 7–45502–3.

Compliance: Required as indicated, unless accomplished previously.

To prevent an inability to lower or retract the landing gear using the landing gear control handle, which could result in use of Emergency Procedures using the landing gear manual release, accomplish the following:

Replacement

(a) Within 5,000 flight cycles after the effective date of this AD, or within one year after the effective date of this AD, whichever occurs first; replace the landing gear control handle with a new landing gear control handle, Canadair P/N 601R50967–11 (Vendor P/N 7–45502–5), per the Accomplishment Instructions of Bombardier Service Bulletin 601R–32–084, dated May 17, 2002.

Exception to Service Bulletin Reporting

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

Maintenance Requirements Manual Revision

(c) Accomplishment of the actions in paragraph (a) of this AD constitutes terminating action for periodic crack inspections, as specified in Bombardier Temporary Revision 2B–627 to Part 2 of Appendix B, Airworthiness Limitations, of the Bombardier, Model CL 600–2B19, Maintenance Requirements Manual.

Alternative Methods of Compliance

(d) 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

(e) The actions shall be done in accordance with Bombardier Service Bulletin 601R–32–084, dated May 17, 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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, 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, 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–2003–03, dated February 3, 2003.

Effective Date

(f) This amendment becomes effective on May 11, 2004.

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7300 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–207–AD; Amendment 39–13563; AD 2004–07–19]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, 747SR, and 747SP Series Airplanes Equipped With Pratt & Whitney JT9D–3, –7, –7Q, and –7R4G2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, 747SR, and 747SP series airplanes equipped with Pratt & Whitney JT9D–3, –7, –7Q, and –7R4G2 series engines. This amendment requires drilling witness holes through the cowl skin at the cowl latch locations in the left-hand side of the cowl panel assembly of each engine. This action is necessary to prevent improper connection of the latch, which could result in separation of a cowl panel from the airplane. Such separation could cause damage to the airplane, consequent rapid depressurization, and hazards to persons or property on the ground. This action is intended to address the identified unsafe condition.

DATES: Effective May 11, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 11, 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: Dan Kinney, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6499; 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 certain Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, 747SR, and 747SP series airplanes equipped with Pratt & Whitney JT9D–3, –7, –7Q, and –7R4G2 series engines was published as a supplemental notice of proposed rulemaking in the **Federal Register** on February 6, 2004 (69 FR 5781). That action proposed to require drilling witness holes through the cowl skin at the cowl latch locations in the left-hand side of the cowl panel assembly of each engine.

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 481 airplanes of the affected design in the worldwide fleet. The FAA estimates that 114 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane (2 work hours per engine) 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 $59,280, or $520 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:

2004–07–19 Boeing: Amendment 39–13563. Docket 2002–NM–207–AD.

Applicability: Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, 747SR, and 747SP series airplanes; equipped with Pratt & Whitney JT9D–3, –7, –7Q, and –7R4G2 series engines; line numbers 1 through 814 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent improper connection of the cowl latch located in the left-hand side of the cowl panel assembly of each engine, which could result in separation of a cowl panel from the airplane; accomplish the following:

Drill Holes

(a) Within 36 months after the effective date of this AD: Drill witness holes through the cowl skin at each of the six cowl latch locations located on the left-hand side of the cowl panel assembly of each engine, per paragraphs 3.B.1. through 3.B.4. of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–71–2301, Revision 1, dated August 21, 2003.

Credit for Actions Accomplished per Previous Service Bulletin

(b) Actions accomplished before the effective date of this AD per the Accomplishment Instructions of Boeing Service Bulletin 747–71–2301, dated May 30, 2002, are acceptable for compliance with the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Special Attention Service Bulletin 747–71–2301, Revision 1, 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 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

(e) This amendment becomes effective on May 11, 2004.

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7299 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NM–01–AD; Amendment 39–13564; AD 2004–07–20]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 and –400D Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 and –400D series airplanes. This action requires an inspection to determine the routing configuration of wire bundle W4489 and related investigative/corrective actions. This action is necessary to prevent possible

interference between wire bundle W4489 and the receptacle housing of the chiller boost fan, drain tubes, and adjacent structure, which could result in damage to the wire bundle and consequent arcing and fire. This action is intended to address the identified unsafe condition.

DATES: Effective April 21, 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 21, 2004.

Comments for inclusion in the Rules Docket must be received on or before June 7, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2004–NM–01–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 fax or the Internet must contain "Docket No. 2004–NM–01–AD" in the subject line and need not be submitted in triplicate. Comments sent via 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined 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.

FOR FURTHER INFORMATION CONTACT: Suk Y. Jang, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6511; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA received a report of a fire in the cargo bay left sidewall at station 900 on a Boeing Model 747–400 series airplane. The fire was caused by arcing between wire bundle W4489 and the receptacle housing of the chiller boost fan, which also caused fire damage to the surrounding insulation blankets and cargo liner. In 1990, the manufacturer corrected this condition by rerouting wire bundle W4489 in the area of the chiller boost fan. However, the corrective action may not have been properly applied to certain Model 747–400 and –400D series airplanes delivered prior to and after 1990. The incorrect wire routing configuration could lead to possible interference between wire bundle W4489 and the receptacle housing of the chiller boost fan, drain tubes, and adjacent structure. This condition, if not corrected, could result in damage to the wire bundle and consequent arcing and fire.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–21A2427, dated April 24, 2003, which describes procedures for inspecting to determine the routing configuration of wire bundle W4489 and related investigative/corrective actions, if necessary. The related investigative actions include a detailed inspection of wire bundle W4489 for damage; and a detailed inspection for missing wire clamps. The corrective actions include repairing any damage to wire bundle W4489; installing any missing wire clamps; and rerouting wire bundle W4489. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent possible interference between wire bundle W4489 and the receptacle housing of the chiller boost fan, drain tubes, and adjacent structure, which could result in damage to the wire bundle and consequent arcing and fire. This AD requires an inspection to determine the routing configuration of wire bundle W4489 and related investigative/corrective actions, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this AD would be $65 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and 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–01–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.

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:

2004–07–20 **Boeing:** Amendment 39–13564. Docket 2004–NM–01–AD.

Applicability: Model 747–400 and –400D series airplanes, as listed in Boeing Alert Service Bulletin 747–21A2427, dated April 24, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible interference between wire bundle W4489 and the receptacle housing of the chiller boost fan, drain tubes, and adjacent structure, which could result in damage to the wire bundle and consequent arcing and fire, accomplish the following:

Inspection and Related Investigation/ Corrective Actions

(a) Within 12 months after the effective date of this AD, inspect to determine the routing configuration for wire bundle W4489; and, before further flight, do all the related investigative/corrective actions, as applicable; by accomplishing all of the actions in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–21A2427, dated April 24, 2003.

Alternative Methods of Compliance

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

Incorporation by Reference

(c) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–21A2427, dated April 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 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

(d) This amendment becomes effective on April 21, 2004.

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7298 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–48–AD; Amendment 39–13553; AD 2004–07–09]

RIN 2120–AA64

Airworthiness Directives; General Electric Aircraft Engines CT7 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for certain General Electric Aircraft Engines (GEAE) CT7 series turboprop engines. That AD currently requires propeller gearbox (PGB) oil filter impending bypass button (IBB) inspections, oil filter inspections, replacement of left-hand and right-hand idler gears at time of PGB overhaul, and replacement of certain serial number (SN) PGBs before accumulating 2,000 flight hours. This AD requires the same actions, and adds additional SNs of affected PGBs. This AD results from reports of PGBs equipped with certain gears that do not meet design specifications, resulting in the same failure addressed in the existing AD. We are issuing this AD to prevent separation of PGB left-hand and right-hand idler gears, which could result in uncontained PGB failure and internal bulkhead damage, possibly prohibiting the auxiliary feathering system from fully feathering the propeller on certain PGBs.

DATES: This AD becomes effective May 11, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 11, 2004. The Director of the Federal Register approved the incorporation by reference of certain other publications listed in the regulations as of April 24, 2003 (68 FR 13618, March 20, 2003).

ADDRESSES: You can get the service information identified in this AD from General Electric Aircraft Engines, CT7 Series Turboprop Engines, 1000 Western Ave, Lynn, MA 01910; telephone (781) 594–3140, fax (781) 594–4805.

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: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7148; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with a proposed AD. The proposed AD applies to certain GEAE CT7 series turboprop engines. We published the proposed AD in the **Federal Register** on

March 20, 2003 (68 FR 13618). That action proposed to require PGB oil filter IBB inspections, oil filter inspections, replacement of left-hand and right-hand idler gears at time of PGB overhaul, and replacement of certain SN PGBs before accumulating 2,000 flight hours.

Comments

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

Clarification of Applicability for AD Inspection Requirements

One commenter requests that we clarify paragraph (c), the applicability paragraph, to state that the inspection applies to all listed PGB serial numbers regardless of whether or not the propeller gearbox is mated to a Hamilton Standard propeller. The commenter states that making this clarification will prevent the AD from being misinterpreted as excluding inspections for PGBs mated to Hamilton Standard propellers.

We agree with the commenter that the AD applies to all CT7 engines with the identified PGBs installed. We do not agree, however, that additional changes to the applicability paragraph are needed or necessary. The applicability paragraph incorporates by reference a Table of affected PGB serial numbers contained in the General Electric Service Bulletins. The AD applies to any engine with a PGB listed in the Table regardless of whether the propeller gearbox is mated to a Hamilton Standard propeller or some other make of propeller. If the PGB is mated to a Hamilton Standard propeller, however, then the AD requires additional actions. These further actions do not imply that the AD is only applicable to engines with PGBs mated to Hamilton Standard propellers. The compliance section is written to be consistent with AD 2003–06–03, which this AD is superseding.

Clarification of the Term Operational Day

The same commenter requests that in paragraph (f)(2), the term "operational day" be replaced with "flight day". The commenter states that the daily inspection of the IBB should not be required on an airplane unless the airplane has been used for flight that day.

We agree that clarification is needed. A definition for "operational day" has been added to the compliance section, which states that an operational day is a day during which the airplane has flown for any reason.

Give Flight Crews Permission To Inspect the IBB

The same commenter requests that we give flight crews permission to inspect the IBB for extension at remote stations where maintenance personnel are not available. This would relieve the burden of sending maintenance personnel to a remote station to do an inspection of the IBB, when the airplane is at that remote station longer than one day. The commenter understands that if the IBB is found extended, maintenance personnel would have to perform the other AD requirements.

We agree that flight crews should be allowed to perform the IBB inspection if the maintenance personnel are not available. If the IBB is found extended, however, maintenance personnel would have to perform the other AD requirements. Paragraph (f)(2) has been rewritten to allow flight crews to inspect the IBB.

No Terminating Action for Paragraphs (h) and (i)

One commenter requests that paragraphs (h) and (i) be revised, as there is no terminating action in these paragraphs for PGBs listed in Table 1 of Service Bulletin (SB) 72–466. The commenter further states that SB 72–452 provides terminating action only for PGBs listed in SB 72–452 and not PGBs listed in SB 72–466.

We do not agree. The terminating action paragraph specifically requires replacement of idler gears using the Accomplishment Instructions of SB 72–452 and does not limit this terminating action to the serial numbers listed in the effectivity of that SB. The accomplishment instructions for replacement of idler gears are the same regardless of the gear serial numbers being replaced. Based on this, replacing the gears using the accomplishment instructions of SB 72–452 is an acceptable terminating action.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

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 the FAA's AD system. That regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. The material previously was included in each individual AD. Since the material is included in 14 CFR part 39, we will not include it in future AD actions.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 99–NE–48–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–13090 (68 FR 13618, March 20, 2003) and by adding a new airworthiness directive, Amendment 39–13553, to read as follows:

2004–07–09 General Electric Aircraft Engines: Amendment 39–13553. Docket No. 99–NE–48–AD. Supersedes AD 2003–06–03, Amendment 39–13090.

Effective Date

(a) This AD becomes effective May 11, 2004.

Affected ADs

(b) This AD supersedes AD 2003–06–03, Amendment 39–13090.

Applicability

(c) This AD applies to General Electric Aircraft Engines (GEAE) CT7 series turboprop engines, with propeller gearboxes (PGBs) identified by serial number (SN) in Table 1 of GEAE CT7 Turboprop Service Bulletin (SB) CT7–TP S/B 72–0452, dated July 27, 2001, and Table 1 of GEAE CT7 Turboprop Alert Service Bulletin (ASB) CT7–TP S/B 72–A0466, dated April 17, 2003. These engines are installed on but not limited to SAAB 340 series airplanes.

Unsafe Condition

(d) This AD results from reports of PGBs equipped with certain gears that do not meet design specifications, resulting in the same failure addressed in the AD being superseded. We are issuing this AD to prevent separation of PGB left-hand and right-hand idler gears, which could result in uncontained PGB failure and internal bulkhead damage, possibly prohibiting the auxiliary feathering system from fully feathering the propeller on certain PGBs.

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.

(f) Inspect the PGB oil filter impending bypass button (IBB) for extension using the following schedule:

(1) Initially inspect within 50 hours time-in-service (TIS) after the effective date of this AD.

(2) Thereafter, inspect each operational day. The flight crew may inspect the PGB oil filter IBB for extension if maintenance personnel are not available.

(g) If the PGB oil filter IBB is extended, replace the oil filter and perform follow-on inspections, using paragraph 3.A of the Accomplishment Instructions of GEAE CT7 Turboprop SB CT7–TP S/B 72–0453, dated July 27, 2001.

(h) At the next return of the PGB to a CT7 turboprop overhaul facility after the effective date of this AD, replace left-hand and right-hand idler gears. Use the Accomplishment Instructions of GEAE CT7 Turboprop SB CT7–TP S/B 72–0452, dated July 27, 2001 to replace the gears.

(i) If the PGB is mated to a Hamilton Standard propeller and the left-hand and right-hand idler gears have not been replaced using the Accomplishment Instructions of GEAE CT7 Turboprop SB CT7–TP S/B 72–0452, dated July 27, 2001, replace the PGB before accumulating an additional 2,000 engine flight hours after April 24, 2003, the effective date of AD 2003–06–03.

PGB Oil Filter IBB Inspection, Authorization

(j) For GEAE CT7 series turboprop engines, in exception to the limitations imposed by § 43.3 of the Federal Aviation Regulations (14 CFR 43.3), a flight crew member holding at least a private pilot certificate may perform the inspections required by paragraph (f) of this AD. You must record completion of the inspections in the airplane records to show compliance with this AD, in accordance with §§ 43.9 and 91.417(a)(2)(v) of the Federal Aviation Regulations 14 CFR 43.9 and 14 CFR 91.417(a)(2)(v). You must also maintain the records as required by the applicable Federal Aviation Regulation.

Terminating Action

(k) Replacement of left-hand and right-hand idler gears using paragraph (h) of this AD, or replacement of the PGB using paragraph (i) of this AD constitutes terminating action to the repetitive inspections required by paragraph (f) of this AD.

Definition

(l) For the purpose of this AD, an operational day is defined as a day during which the airplane has flown for any reason.

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.

Special Flight Permits

(n) Under 14 CFR 39.23, we are limiting the special flight permits for this AD by allowing the operation of an airplane that does not have more than one engine with a PGB oil filter IBB extended to a location where the requirements of this AD can be done.

Material Incorporated by Reference

(o) You must use the service information specified in Table 1 to perform the inspections and replacements required by this AD. The Director of the Federal Register approved the incorporation by reference of GEAE CT7 Turboprop SB CT7–TP S/B 72–0452, dated July 27, 2001, and GEAE CT7 Turboprop SB CT7–TP S/B 72–0453, dated July 27, 2001, as of April 24, 2003 (68 FR 13618, March 20, 2003). The Director of the Federal Register approves the incorporation by reference of GEAE CT7 Turboprop ASB CT7–TP S/B 72–A0466, dated April 17, 2003 in accordance with 5 U.S.C.552(a) and 1 CFR part 51. You can get copies from General Electric Aircraft Engines, CT7 Series Turboprop Engines, 1000 Western Ave, Lynn, MA 01910; telephone (781) 594–3140, fax (781) 594–4805. 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
SB CT7–TP S/B 72–0452 ..... Total Pages: 12.	ALL	Original	July 27, 2001.
SB CT7–TP S/B 72–0453 ..... Total Pages: 5.	ALL	Original	July 27, 2001.
ASB CT7–TP S/B 72–A0466 ..... Total Pages: 7.	ALL	Original	April 17, 2003.

Related Information

(p) None.

Issued in Burlington, Massachusetts, on March 24, 2004.

Francis A. Favara,

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

[FR Doc. 04–7233 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–101–AD; Amendment 39–13554; AD 2004–07–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, that requires replacement of the proximity switch electronics unit with a new, improved unit. This action is necessary to prevent a malfunction of the aural warning for the landing gear, leading the crew to open the circuit breaker for the aural warning horn which stops the operation of other aural warnings of malfunctions in other systems and, thus, could jeopardize a safe flight and landing. This action is intended to address the identified unsafe condition.

DATES: Effective May 11, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 11, 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: Binh V. Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6485; 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 certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes was published in the **Federal Register** on December 31, 2003 (68 FR 75469). That action proposed to require replacement of the proximity switch electronics unit with a new, improved unit.

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 890 airplanes of the affected design in the worldwide fleet. The FAA estimates that 283 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $40 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $84,900, or $300 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.

The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this AD. As a result, the costs attributable to the AD may be less than stated above.

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:

2004–07–10 Boeing: Amendment 39–13554. Docket 2002–NM–101–AD.

Applicability: Model 737–600, –700, –700C, –800, and –900 series airplanes, as listed in Boeing Alert Service Bulletin 737–32A1343, dated July 26, 2001; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a malfunction of the aural warning for the landing gear, leading the crew to open the circuit breaker for the aural warning horn which stops the operation of other aural warnings of malfunctions in other systems and, thus, could jeopardize a safe flight and landing, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD: Remove the Proximity Switch Electronics Unit (PSEU) having part number 285A1600–2 or 285A1600–3 and replace it with a PSEU having part number 285A1600–4, per the Accomplishment Instructions of Boeing Alert Service Bulletin 737–32A1343, dated July 26, 2001.

Parts Installation

(b) As of the effective date of this AD, no person shall install a PSEU having part number 285A1600–2 or 285A1600–3 on any airplane.

Alternative Methods of Compliance

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

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–32A1343, dated July 26, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, 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

(e) This amendment becomes effective on May 11, 2004.

Issued in Renton, Washington, on March 22, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7127 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–335–AD; Amendment 39–13550; AD 2004–07–06]

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 certain Boeing Model 707 and 720 series airplanes, that requires repetitive inspections of the upper and lower barrel nuts and bolts that retain the aft trunnion support fitting of each main landing gear for corrosion, cracks, and loose or missing nuts and bolts; torque checks of the upper and lower bolts to verify the torque is within a specified range; and corrective actions, if necessary. This action is necessary to detect and correct cracking and/or loss of the barrel nuts and bolts that retain the aft trunnion support fitting, which could result in the collapse of the main landing gear upon landing. This action is intended to address the identified unsafe condition.

DATES: Effective May 11, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 11, 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 certain Boeing Model 707 and 720 series airplanes was published in the **Federal Register** on December 18, 2003 (68 FR 70477). That action proposed to require repetitive inspections of the upper and lower barrel nuts and bolts that retain the aft trunnion support fitting of each main landing gear for corrosion, cracks, and loose or missing nuts and bolts; torque checks of the upper and lower bolts to verify the torque is within a specified range; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

After careful review of the available data, we have 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.

It will take approximately 1 work hour per airplane to accomplish the required detailed inspection of the upper and lower barrel nuts and bolts and the torque check. 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, per inspection and torque check.

It will take approximately 3 work hours per airplane to accomplish the required detailed inspection of the aft trunnion bearing cap. The average labor rate is $65 per airplane. Based on these figures, the cost impact on U.S. operators is estimated to be $8,190, or $195 per airplane.

It will take approximately 4 work hours per airplane to accomplish the required installation of the new Inconel barrel nut and bolt and the main landing gear trunnion. The average labor rate is $65 per work hour. Based on these figures, the cost on U.S. operators is estimated to be $10,920, or $260 per airplane.

Required parts will cost approximately $3,380 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–07–06 Boeing: Amendment 39–13550. Docket 2002–NM–335–AD.

Applicability: Model 707 and 720 series airplanes, as listed in Boeing 707 Alert Service Bulletin A3509, dated June 13, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking and/or loss of the upper and lower barrel nuts and bolts that retain the aft trunnion support fitting, which could result in the collapse of the main landing gear upon landing, accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3509, dated June 13, 2002.

Initial Inspection

(b) Within 60 days after the effective date of this AD, for each main landing gear, perform the inspection specified in paragraph (b)(1) of this AD and the torque check specified in paragraph (b)(2) of this AD, in accordance with the service bulletin.

(1) Perform a detailed inspection of the upper and lower barrel nuts and bolts that retain the aft trunnion support fitting for corrosion, cracks, and loose or missing nuts and bolts.

(2) Torque check the upper and lower bolts to verify the torque is within the range specified in Figure 2 of the service bulletin.

Repetitive Inspections

(c) If no corrosion, crack, or loose or missing nut or bolt is found, and the torque is found to be within the specified range, during the inspection and torque check specified in paragraph (b) of this AD, then repeat the actions specified in paragraph (b) of this AD thereafter at intervals not to exceed 60 days.

Corrective Actions

(d) If any corrosion, crack, or loose or missing nut or bolt is found, or if the torque is found not to be within the specified range, during the inspection and torque check specified in paragraph (b) of this AD: Before further flight, do the corrective actions specified in paragraphs (d)(1) through (d)(3) of this AD. Accomplishment of these actions constitutes terminating action for the repetitive inspections specified in paragraph (c) of this AD.

(1) Perform a detailed inspection of the aft trunnion bearing cap and aft trunnion support fitting for corrosion, in accordance with the service bulletin. If any corrosion is detected, before further flight, repair in accordance with the service bulletin.

(2) Perform a magnetic particle inspection of the aft trunnion bearing cap for cracks in accordance with Figure 3 of the service bulletin.

(i) If no crack is found, before further flight, reinstall the inspected aft trunnion bearing cap in accordance with the service bulletin.

(ii) If any crack is found, before further flight, replace the aft trunnion bearing cap with a new aft trunnion bearing cap in accordance with the service bulletin.

(3) Reinstall the main landing gear trunnion with new Inconel barrel nuts and bolts to retain the aft trunnion support fitting, in accordance with Figure 4 of the service bulletin.

Terminating Action

(e) Within one year after the effective date of this AD, for each main landing gear, replace the upper and lower steel barrel nuts and H–11 bolts that retain the aft trunnion support fitting with new Inconel barrel nuts and bolts as specified in paragraphs (d)(1) through (d)(3) of this AD. Accomplishment of these actions constitutes terminating action for the requirements of this AD.

Parts Installation

(f) As of the effective date of this AD, no person shall install a steel barrel nut with H–11 bolt to retain the aft trunnion support fitting, on any airplane.

Alternative Methods of Compliance

(g) 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

(h) The actions shall be done in accordance with Boeing 707 Alert Service Bulletin A3509, dated June 13, 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

(i) This amendment becomes effective on May 11, 2004.

Issued in Renton, Washington, on March 19, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7126 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 031201299–3299–01]

RIN 0694–AC54

Removal of "National Security" controls from, and imposition of "Regional Stability" controls on, certain items on the Commerce Control List; Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; correction.

SUMMARY: The Bureau of Industry and Security published in the **Federal Register** of March 30, 2004, a final rule that replaced national security export and reexport controls on certain items with regional stability controls. This document corrects two typographical errors that appeared in that rule.

DATES: This rule is effective March 30, 2004.

FOR FURTHER INFORMATION CONTACT: William Arvin, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–0436.

SUPPLEMENTARY INFORMATION: The Bureau of Industry and Security published in the **Federal Register** of March 30, 2004 (69 FR 16478), a final rule that replaced national security export and reexport controls on certain items with regional stability controls. That document inadvertently misstated a cross reference to Export Control Classification Number 0A984 as 0984. It also misstated a reference to Country Chart column "AT Column 1" as "AT

Column". This document corrects those errors.

PART 774—[CORRECTED]

■ In rule FR Doc. 04–7005, published on March 30, 2004 (69 FR 16478), make the following corrections. On page 16480, the middle column, correct the note to Export Control Classification Number 0A018, paragraph .c to read as follows:

Note: 0A018.c does not control weapons used for hunting or sporting purposes that were not specifically designed for hunting or sporting purposes that were not specially designed for military use and are not of the fully automatic type, but see 0A984 concerning shotguns.

■ On page 16480, the third column, in the Reason for Control paragraph of the License Requirements section of Export Control Classification Number 0E918, correct the third line in the Country Chart column to read: AT Column 1.

Eileen Albanese,

Director, Office of Exporter Services.

[FR Doc. 04–7808 Filed 4–5–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

Emergency Use of an Investigational New Drug; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect a change in address for the agency contacts for submitting an investigational new drug application (IND) in an emergency situation. This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

DATES: This rule is effective April 6, 2004.

FOR FURTHER INFORMATION CONTACT: Mark I. Fow, Office of Emergency Operations (HFA–615), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1240.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in part 312 (21 CFR part 312) to reflect a change in address for the agency contacts for submitting an IND in an emergency situation that does not allow time for submission of an IND in accordance with § 312.23 or § 312.34. The current address for submission of investigational biological drugs in an emergency situation is the "Division of Biological Investigational New Drugs (HFB–230), Center for Biologics Evaluation and Research, 8800 Rockville Pike, Bethesda, MD 20892, 301–443–4864." The new address for investigational biological drugs regulated by the Center for Biologics Evaluation and Research is "Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, 301–827–2000." The current contact for submission of all other investigational drugs in an emergency situation is the "Document Management and Reporting Branch (HFD–53), Center for Drug Evaluation and Research, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4320." The new contact is the "Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, 301–827–4570." The current contact for submitting requests for the Center for Biologics Evaluation and Research or the Center for Drug Evaluation and Research regulated products after normal working hours, eastern standard time, in an emergency situation is "FDA Division of Emergency and Epidemiological Operations, 202–857–8400." The new contact is "FDA Office of Emergency Operations (HFA–615), 301–443–1240."

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 312 is amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

■ 1. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371; 42 U.S.C. 262.

■ 2. Section 312.36 is revised to read as follows:

§ 312.36 Emergency use of an investigational new drug (IND).

Need for an investigational drug may arise in an emergency situation that does not allow time for submission of an IND in accordance with § 312.23 or § 312.34. In such a case, FDA may authorize shipment of the drug for a specified use in advance of submission of an IND. A request for such authorization may be transmitted to FDA by telephone or other rapid communication means. For investigational biological drugs regulated by the Center for Biologics Evaluation and Research, the request should be directed to the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, 301–827–2000. For all other investigational drugs, the request for authorization should be directed to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, 301–827–4570. After normal working hours, eastern standard time, the request should be directed to the FDA Office of Emergency Operations (HFA–615), 301–443–1240. Except in extraordinary circumstances, such authorization will be conditioned on the sponsor making an appropriate IND submission as soon as practicable after receiving the authorization.

Dated: March 31, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–7734 Filed 4–5–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 101 and 104

[USCG–2004–17350]

Interpretation of International Voyage for Security Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notice of interpretation.

SUMMARY: The Coast Guard is issuing an interpretation of the term "international voyage" as it is used in our recently-issued maritime security regulations. This interpretation will assist U.S. flag vessels operating in the waters of a foreign country in determining whether they must comply with the new International Ship and Port Facility

Security Code (ISPS) requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

DATES: Effective April 6, 2004. Comments and related material must reach the Docket Management Facility on or before July 6, 2004.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2004–17350 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web Site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, please contact Lieutenant Commander Martin Walker, Project Manager, Office of Compliance (G–MOC–1), U.S. Coast Guard Headquarters, telephone 202–267–1047. If you have questions on viewing or submitting material to the docket, call Ms. Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On October 22, 2003, we published a final rule entitled "Vessel Security" (68 FR 60483), which was one of six maritime security rules published in the **Federal Register** that date. The vessel security rule, specifically 33 CFR 104.297, requires owners or operators of U.S. flag vessels that are subject to the International Convention for Safety of Life at Sea, 1974, (SOLAS), to obtain an International Ship Security Certificate (ISSC), as described in 46 CFR 2.01–25, by July 1, 2004. The ISSC certifies that the ship has an approved ship security plan and that it complies with the applicable requirements of SOLAS chapter XI–2 and Part A, taking into account Part B, of the International Ship and Port Facility Security Code (ISPS).

In 33 CFR 101.105 of the "Implementation of National Maritime Security Initiatives" final rule, we included a definition of "international voyage" that applies to 33 CFR chapter I, subchapter H, including part 104, Vessel Security. To clarify one aspect of this security-related definition, we are issuing this notice.

For purposes of vessel security, in interpreting 33 CFR 101.105 and 104.297, the Coast Guard will consider that each voyage of a U.S. vessel originates at a port in the United States, regardless of when the voyage actually began. Such a voyage is considered to continue, until such time as the U.S.-flagged vessel returns to the United States. U.S. vessels operating from a foreign port will be considered to be on an international voyage.

Therefore, any U.S. vessel that otherwise meets the applicable tonnage or capacity requirements in SOLAS for a cargo or passenger vessel that is engaged on an international voyage must meet ISPS requirements and obtain an ISSC, within the prescribed timeline.

Comments and Viewing Documents Referenced in This Notice

If you wish to submit comments regarding this notice, please send them to the Docket Management Facility at the address under **ADDRESSES**. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include your name and address, and identify the docket number (USCG–2004–17350). You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 81/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Dated: March 25, 2004.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 04–7792 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–15–U

AMERICAN BATTLE MONUMENTS COMMISSION

36 CFR Part 400

Employee Responsibilities and Conduct; Removal of Superseded Regulations and Addition of Residual Cross-References

AGENCY: American Battle Monuments Commission (ABMC).

ACTION: Direct final rule.

SUMMARY: The American Battle Monuments Commission is repealing its superseded old agency employee responsibilities and conduct regulations, which have been replaced by the executive branch-wide Standards of Ethical Conduct and financial disclosure regulations issued by the Office of Government Ethics (OGE). In their place, the ABMC is adding a section of residual cross-references to those new provisions as well as to certain executive branch-wide conduct rules promulgated by the Office of Personnel Management (OPM).

DATES: This rule is effective May 6, 2004 without further action, unless adverse comment is received by May 5, 2004. If adverse comment is received, ABMC will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments by any of the following methods: Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Agency Web site: *www.abmc.gov.* Follow the instructions for submitting comments on the ABMC Web site. E-mail: *gloukhofft@abmc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Theodore Gloukhoff, Designated Agency Ethics Official, American Battle

Monuments Commission, Suite 500, Courthouse Plaza II, 2300 Clarendon Boulevard, Arlington, VA 22201; telephone: (703) 696–6908; FAX: (703) 696–6666.

SUPPLEMENTARY INFORMATION: In 1992, OGE issued a final rule setting forth uniform Standards of Ethical Conduct and an interim final rule on financial disclosure for executive branch departments and agencies of the Federal Government and their employees. Those two executive branch-wide regulations, as corrected and amended, are codified at 5 CFR parts 2634 and 2635. Together those regulations have superseded the old ABMC regulations on employee responsibilities and conduct, which were codified at 36 CFR part 400 (and were based on prior OPM standards). Accordingly, the ABMC is removing its superseded regulations and adding in place thereof a new section containing residual cross-references to the new provisions at 5 CFR parts 2634 and 2635. In addition, the ABMC is adding to that section a reference to the specific executive branch-wide restrictions on gambling, safeguarding the examination process and conduct prejudicial to the Government which are set forth in 5 CFR part 735, as issued by OPM in 1992.

List of Subjects in 36 CFR Part 400

Conflict of interests, Government employees.

■ For the reasons set forth in the preamble, American Battle Monuments Commission is revising 36 CFR part 400 to read as follows:

PART 400—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Authority: 5 U.S.C. 7301; 36 U.S.C. 2103.

§ 400.1 Cross-references to employees' ethical conduct standards, financial disclosure regulations and other conduct rules.

Employees of the American Battle Monuments Commission are subject to the executive branch-wide standards of ethical conduct and financial disclosure regulations at 5 CFR parts 2634 and 2635 as well as the executive branch-wide employee responsibilities and conduct regulations at 5 CFR part 735.

Dated: March 30, 2004.

Theodore Gloukhoff,

Director, Personnel and Administration.

[FR Doc. 04–7675 Filed 4–5–04; 8:45 am]

BILLING CODE 6120–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2003–FL–0001–200414(a); FRL–7643–3]

Approval and Promulgation of Implementation Plans: Florida Broward County Aviation Department Variance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to State Implementation Plan (SIP) submitted by the State of Florida for the purpose of a department order granting a variance from Rule 62–252.400 to the Broward County Aviation Department. EPA believes that this proposed revision to the SIP is approvable based on the June 23, 1993, EPA policy memorandum entitled, *Impact of the Recent Onboard Decision on Stage II Requirements in Moderate Nonattainment Areas* which indicates that a Stage II program is not a mandatory requirement for areas classified "moderate" or below, upon EPA's promulgation for On-board Refueling Vapor Recovery systems.

DATES: This direct final rule is effective June 7, 2004, without further notice, unless EPA receives adverse comment by May 6, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted by mail to: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in sections III.B.1. through 3. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Analysis of State's Submittal

Florida Administrative Code (F.A.C.) Rule 62–252.400, requires Stage II vapor recovery systems for all gasoline dispensing facilities located in Broward, Dade, and Palm Beach counties which commence construction or undertake a significant modification after November 15, 1992, prior to dispensing 10,000 gallons or more in any one month. The purpose of the Stage II vapor recovery requirement in Rule 62–252.400, F.A.C. is to recover 95% by weight of vapors displaced from a vehicular fuel tank during refueling.

Under Section 120.542, of the Florida Statutes, the department may grant a variance when the person subject to a rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means, or when application of a rule would create a substantial hardship or violate principles of fairness.

On April 22, 2003, Broward County Aviation Department submitted a petition for variance from the requirements of Rule 62–252.400, F.A.C. for a proposed consolidated rental car facility fueling area at the Ft. Lauderdale-Hollywood International Airport. The petitioner has estimated that 100% of the vehicles to be refueled at the consolidated rental car facility fueling area will be new vehicles equipped with on-board refueling vapor recovery (ORVR) technologies. The design recovery efficiency of installed ORVR systems is 95%. Further, the petitioner estimates the cost of installation of Stage II vapor recovery will be $250,000 to $370,000 initially with additional cost for maintaining the system. Given the estimated 100% use of the onboard refueling vapor recovery technologies for all vehicles and the high cost of complying with rule 62–252.400 F.A.C., the department has determined that the health and environmental concerns addressed by the underlying statute will be met without Stage II vapor recovery systems. Therefore the department has issued an Order Granting Variance to Broward County Aviation Department, relieving the county from requirements of Rule 62–252.400, F.A.C. Since this rule has previously been approved into Florida's SIP, the department is requesting approval of this variance as a revision to the SIP. EPA believes that this proposed revision to the SIP is approvable based on the June 23, 1993, EPA policy memorandum entitled, *Impact of the Recent Onboard Decision on Stage II Requirements in Moderate Nonattainment Areas* which indicates that a Stage II program is not a

mandatory requirement for areas classified "moderate" or below, upon EPA's promulgation for On-board Refueling Vapor Recovery systems. States were required to adopt Stage II rules for such areas under section 182(b)(3). However, 202(a)(6) states that "the requirements of section 182(b)(3) (relating to Stage II gasoline vapor recovery) for areas classified under section 181 as moderate for ozone shall not apply after promulgation of such standards [*i.e.*, onboard controls] * * *" Section 202 On-board Refueling Vapor Recovery regulations were promulgated by EPA on April 6, 1994, and the requirements of these regulations are currently being phased-in.

In this circumstance, EPA does believe that a determination of "widespread" use is necessary to provide for the variance for Stage II requirements for this area or the facility in question. In accordance with the June 23, 1993, EPA policy memorandum, the State has the option to implement a Stage II program in this area, and as such, the State can provide this variance for the consolidated rental car facility.

II. Final Action

EPA is approving the aforementioned changes to the State of Florida because they are consistent with the Clean Air Act and EPA policy. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 7, 2004, without further notice unless the Agency receives adverse comments by May 6, 2004.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 7, 2004, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under R04–0AR–2003–FL–0001. The official public file 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 rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding Federal holidays.

2. *Electronic Access.* An electronic version of the public docket is available through EPA's Regional Material EDocket (RME) system, a part of EPA's electronic docket and comment system. You may access RME at *http://docket.epa.gov/rmepub/index.jsp* to review associated documents and submit comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number.

You may also access this **Federal Register** document electronically through the Regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register,** the Government's legal newspaper, and are open for comment.

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 at the EPA Regional Office, 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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

3. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency. Florida Department of Environmental Protection, Division of Air Resource Management, 2600 Blair Stone Road, MS 5500, Tallahassee, Florida 32399–2400.

B. 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 rulemaking identification number by including the text "Public comment on proposed rulemaking R04–0AR–2003–FL–0001" 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.

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 Regional Material EDocket. 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. *Regional Material EDocket (RME).* Your use of EPA's RME to submit

comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to RME at *http://docket.epa.gov/rmepub/index.jsp,* and follow the online instructions for submitting comments. To access EPA's RME from the EPA Internet Home Page, select "Information Sources," "Dockets," "EPA Dockets," "Regional Material EDocket." Once in the system, select "quick search," and then key in RME Docket ID No. R04–0AR–2003–FL–0001. 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 electronic mail (e-mail) to *lakeman.sean@epa.gov,* please include the text "Public comment on proposed rulemaking R04–0AR–2003–FL–0001." in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, 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. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. 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.

iv. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please include the text "Public comment on proposed rulemaking R04–0AR–2003–FL–0001" in the subject line on the first page of your comment.

3. Deliver your comments to: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9:00 to 3:30, excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. 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 official public regional rulemaking file. 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 file and available for public inspection 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.

D. 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 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 your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

IV. Statutory and Executive Order Reviews

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

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

because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 7, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 24, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

Subpart (K)—Florida

■ 2. Section 52.520 is amended by adding a new entry at the end of the table in paragraph (d) for "Broward County Aviation Department" to read as follows:

§ 52.520 Identification of plan.

* * * * *

(d) * * *

EPA APPROVED FLORIDA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State effective date	EPA approval date	Explanation
* * *	*	*	* *	* *
Broward County Aviation Department	.....	8/15/03	4/6/04 ..... [Insert citation of publication]	Order Granting Variance from Rule 62–252.400

* * * * *

[FR Doc. 04–7645 Filed 4–5–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

Gasoline Volatility Standard for the Denver/Boulder Area

CFR Correction

■ In Title 40 of the Code of Federal Regulations, Parts 72 to 80, revised as of July 1, 2003, in § 80.27, in the table in paragraph (a)(2), the entry for Colorado and footnote 2 are correctly reinstated to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

(2) * * *

APPLICABLE STANDARDS [1] 1992 AND SUBSEQUENT YEARS

State	May	June	July	August	September
* * * *	*	*	*	*	*
Colorado [2]	9.0	7.8	7.8	7.8	7.8
* * * *	*	*	*	*	*

[1] Standards are expressed in pounds per square inch (psi).

[2] The standard for 1992 through 2001 in the Denver-Boulder area designated nonattainment for the 1-hour ozone NAAQS in 1991 (see 40 CFR 81.306) will be 9.0 for June 1 through September 15.

* * * * *

[FR Doc. 04–55504 Filed 4–5–04; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 411 and 424

[CMS–1810–CN]

RIN 0938–AK67

Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships (Phase II); Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of interim final rule with comment period.

SUMMARY: This document corrects a technical error in the interim final rule with comment period published in the **Federal Register** on March 26, 2004, entitled "Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships (Phase II)."

EFFECTIVE DATE: This correction is effective July 26, 2004.

FOR FURTHER INFORMATION CONTACT: Joanne Sinsheimer (410) 786–4620.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 04–6668 of March 26, 2004 (69 FR 16054), there was a technical error that we are identifying and correcting in the Correction of Errors section below. (The provisions in this correction are effective as if they were included in the document published March 26, 2004.)

We inadvertently omitted two sections from the preamble of the document, "Section IX. Reporting Requirements" and "Section X. Sanctions." We are publishing the omitted sections in this correction.

II. Correction of Errors

In FR Doc. 04–6668 of March 26, 2004 (69 FR 16054), make the following correction—

On page 16099, column three, before the fourth paragraph, add "Section IX. Reporting Requirements" and "Section X. Sanctions" to read as follows:

IX. Reporting Requirements (Section 1877(f) of the Act; Phase II; § 411.361)

[If you choose to comment on issues in this section, please include the caption "Reporting Requirements" at the beginning of your comments.]

Existing Law: Section 1877(f) of the Act sets forth certain reporting requirements for all entities providing covered items or services for which payment may be made under Medicare. Under section 1877(f) of the Act, each entity must report to the Secretary information concerning the entity's ownership, investment, and compensation arrangements, including—

(1) The covered items and services provided by the entity, and

(2) The names and unique physician identification numbers (UPINs) of all physicians who have an ownership or investment interest in, or a compensation arrangement with, the entity, or whose immediate relatives have such an ownership or investment interest in, or compensation relationship with, the entity.

The requirements do not apply to DHS provided outside the United States or to entities that the Secretary determines provide services for which payment may be made under Medicare very infrequently.

The required information must be provided in a form, manner, and at such times that the Secretary specifies. Section 1877(g)(5) of the Act provides that any person who is required, but fails, to meet one of these reporting requirements is subject to a civil money penalty of not more than $10,000 for each day for which reporting is required to have been made.

The August 1995 final rule with comment period (60 FR 41914), which applied only to referrals for clinical laboratory services, addressed the provisions of sections 1877(f) and (g)(5) of the Act in § 411.361. Section 411.361 stated that the reporting requirements applied to all entities furnishing items or services for which payment may be made under Medicare, except for entities that provide 20 or fewer Part A and Part B services during a calendar year or DHS provided outside the United States. Entities were required to submit information to us concerning any ownership or investment interest or any compensation arrangement, as described in section 1877 of the Act. We specified that the information submitted must include at least the following:

(1) The name and UPIN of each physician who has a financial relationship with the entity;

(2) The name and UPIN of each physician with an immediate relative (as then defined in § 411.351) who has a financial relationship with the entity;

(3) The covered items and services provided by the entity; and

(4) With respect to each physician identified under (1) and (2), the nature of the financial relationship (including the extent and/or value of the ownership or investment interest or the compensation arrangement, if requested by us).

Section 411.361 of the August 1995 final rule provided that the required information must be submitted on a form prescribed by us within the time period specified by the servicing carrier or intermediary. Entities were given at least 30 days from the date of the carrier's or intermediary's request to provide the information. Thereafter, the entity must provide updated information within 60 days of the date of any change in the submitted information. This section required the entity to retain documentation sufficient to verify the information provided on the forms and, upon request, to make that documentation available either to us or to the Office of the Inspector General (OIG). Information furnished under § 411.361 was subject to public disclosure in accordance with the provisions of 42 CFR part 401.

Proposed Rule: The January 1998 proposed rule stated that we were in the process of developing a procedure and form for implementing the reporting requirements and that we planned to notify affected parties about the procedures at a later date (63 FR 1703). We stated that, until then, physicians and entities were not required to report to us. We also noted that the 60-day timeframe for reporting updated information could be onerous and thus, we proposed to modify § 411.361 to require entities to report annually to us updated information regarding their financial relationships with physicians.

The proposed rule also noted in § 411.361(d) that a reportable financial relationship was defined as "any ownership or investment interest or any compensation arrangement, as described in section 1877 of the Act." Under that definition, we were concerned that an entity could decide that it fell within one of the exceptions and thus report no information to us. As a result, we would have no opportunity to scrutinize the entity's financial arrangements to determine if that assessment was correct. We proposed to modify § 411.361(d) to include those relationships excepted in the statute.

We also proposed that the information that an entity must acquire, retain, and submit to us if requested, for each physician identified in the rule, include the nature of the financial relationship (including the extent and/or value of the ownership or investment interest or any compensation arrangement).

Final Rule: The final rule generally requires entities to retain reportable information and furnish it upon request. For reasons set out in more detail in the responses to comments that follow, we have reconsidered some of the proposed provisions regarding reporting requirements.

We have modified the proposed definition of "reportable financial relationship" in § 411.361(d). While we are still including in the definition those relationships excepted under § 411.355 through § 411.357, we are specifically excluding from that definition ownership or investment interests in publicly-traded securities and mutual funds if such interests satisfy the exceptions in § 411.356(a) or § 411.356(b), respectively. This exclusion from the definition of reportable financial relationships for publicly-traded securities and mutual funds is limited to shareholder information; contractual arrangements concerning these ownership or investment interests are reportable financial relationships.

We are also modifying § 411.361(c)(4) to specify that the information required is only that information that the entity knows or should know in the course of prudently conducting business, including, but not limited to, records that the entity is already required to retain to comply with Internal

Revenue Service and Securities and Exchange Commission rules and other rules under the Medicare and Medicaid programs.

We do not intend to develop any forms for the submission of information. We are requiring that records be retained for the length of time specified by the applicable regulatory requirements for the information, including the Internal Revenue Service, the Securities and Exchange Commission, and the Medicare and Medicaid programs and be made available upon request. We have dropped the requirement to report updated information every 12 months.

Comment: Most commenters were concerned that the proposed reporting requirements were unduly burdensome.

Response: We believe we have significantly reduced the burden on entities with the modifications we have made to the proposed rule.

Comment: Several organizations requested that we limit the reporting requirements to only those financial relationships that do not meet a Stark exception. Of those, half of the commenters asked that we specifically exempt publicly-traded securities and mutual funds.

Response: We do not agree that all excepted financial relationships should be exempt from the reporting requirements. We are still concerned that an entity could decide that one or more of its financial relationships falls within an exception, fail to retain data concerning those financial relationships, and thereby prevent the government from reviewing the arrangements to see if they qualify for an exception. However, we are persuaded that, in the case of shareholder information for ownership interests in publicly-traded securities and mutual funds that satisfies the exceptions in § 411.356(a) or § 411.356(b), respectively, the burden of collecting, retaining, and reporting shareholder information outweighs the benefit of reviewing it, and the potential for abuse is minimal. Therefore, we are providing that shareholder information for ownership interests in publicly-traded securities and mutual funds need not be reported. Nevertheless, entities must report other financial relationships with referring physicians who are shareholders, such as personal services arrangements.

Comment: Several commenters were of the opinion that the reporting requirements exceeded those in the statute and thus, we were without statutory authority to impose them.

Response: As explained in the January 2001 final rule, we believe that the statute allows us to gather information on all financial relationships without regard to whether the relationships qualify for an exception. Section 1877(f) of the Act states that each entity providing any covered items or services for which payment may be made under Medicare shall provide the Secretary with information concerning the entity's "ownership, investment, and compensation arrangements, *including* * * * the names and unique physician identification numbers of all physicians with an ownership or investment interest (as described in subsection (a)(2)(A)), or with a compensation arrangement (as described subsection (a)(2)(B)), in the entity. * * *" (emphasis added). Thus, we believe the statute allows us to gather-data on financial relationships, *including, but not limited to,* financial relationships that do not qualify for an exception under sections 1877(a)(2)(A) or 1877(a)(2)(B) of the Act.

Comment: Several commenters suggested that we confine our requests for information to records that an entity is already required to retain under Internal Revenue Service, Securities and Exchange Commission, and Medicare and Medicaid requirements.

Response: We agree with the commenters that these records should be retained to provide information, upon request, concerning an entity's financial relationships. However, we are also requiring that entities retain, and provide upon request, other records that they know or should know about in the course of prudently conducting business and that would evidence the nature of the financial relationships (including the extent and/or value of the ownership or investment interest or compensation arrangement).

Comment: Three organizations believed that the "knows or should know" standard was too vague to provide guidance concerning which records should be retained.

Response: We disagree with the commenters. Entities are required to discern which records they know or should know about in the course of prudently conducting business on a daily basis. We are only requiring retention of those records that entities would retain in the prudent conduct of their business. We are not requiring that any additional records be created specifically to comply with the requirements of this rule. We have defined the scope of the required information and the reportable financial relationships with sufficient specificity to allow an entity to determine what information should be retained.

Comment: Two associations believed that 30 days was not enough time in which to respond to a request for information.

Response: The regulation states that entities must submit the required information within the time period specified in the request, but will be given at least 30 days from the date of the request to provide the information. Since the records requested will already be retained in the course of conducting business, in most cases 30 days should be sufficient to collect them in response to a request. In addition, the rule states that the entity will be given at least 30 days, leaving open the possibility of a greater period of time if reasonably necessary.

Comment: Two commenters felt that the information requested should be confidential.

Response: We are bound to comply with the Freedom of Information Act (FOIA), (5 U.S.C. § 552), as implemented by the Department's regulations at 45 CFR part 5 and our own regulations as 42 CFR part 401. To the extent we are obligated to disclose records that we have received pursuant to the physician self-referral reporting requirements, we cannot maintain these records as confidential. However, because § 411.361(e) requires information to be disclosed to CMS or the OIG, we are modifying § 411.361(g) to provide that information furnished to either CMS or the OIG will be subject to public disclosure in accordance with 42 CFR part 401. Nevertheless, to the extent that reported information is protected from disclosure under the Privacy Act of 1974 (December 31, 1974, Pub. L. 93–579), the information will not be disclosed in response to a FOIA request.

X. Sanctions (Section 1877(g) of the Act; Phase II; § 411.353)

[If you choose to comment on issues in this section, please include the caption "Sanctions" at the beginning of your comments.]

Violations of the physician self-referral prohibition are subject to the following sanctions: (i) Nonpayment of claims for DHS furnished as a result of a prohibited referral, and (ii) the obligation to refund amounts collected as a result of submitting claims for DHS performed pursuant to a prohibited referral. These sanctions are addressed in section III.B of the January 1998 proposed rule (63 FR 1695), in section III. A of the Phase I preamble (66 FR 864), in section II.A of this Phase II preamble, and in the regulations at § 411.353. We are making no changes to the sanction provisions in § 411.353. Under section 1877(g)(3) and (g)(4), individuals and entities that knowingly violate the prohibition are subject to civil monetary penalties (CMPs). The CMP sanctions set forth in section 1877(g)(3) and (g)(4) are enforced by the OIG in accordance with the regulations at 42 CFR part 1003.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice take effect. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued.

We believe that it is unnecessary to subject the correction identified above to public comment because it merely provides preamble language that was inadvertently omitted from the regulation preamble. For this reason, and because the public will have an opportunity to comment on this section with the interim final rule with comment period, we find it unnecessary to provide separately the opportunity for comment on the technical correction made in this notice. Therefore, we find good cause to waive notice and comment procedures.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 31, 2004.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 04–7716 Filed 4–1–04; 11:57 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–1380–IFC]

RIN 0938–AN05

Medicare Program; Manufacturer Submission of Manufacturer's Average Sales Price (ASP) Data for Medicare Part B Drugs and Biologicals

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period will implement the provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) related to the calculation and submission of manufacturer's average sales price (ASP) data on certain Medicare Part B drugs and biologicals to CMS by manufacturers.

DATES: Effective date: These regulations are effective on April 30, 2004.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on June 7, 2004.

ADDRESSES: In commenting, please refer to file code CMS–1380–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Submit electronic comments to *http://www.cms.hhs.gov/regulations/ecomments* or to *http://www.regulations.gov*. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1380–IFC, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. After the close of the comment period, CMS posts all electronic comments received before the close of the comment period on its public website.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Marjorie Baldo, (410) 786–0548.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–1380–IFC and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call telephone number: (410) 786–7197.

I. Background

[If you choose to comment on issues in this section, please include the caption "BACKGROUND" at the beginning of your comments.]

Section 303(c) of the MMA amends Title XVIII of the Social Security Act (the Act) by adding new section 1847A. This new section establishes the use of the ASP methodology for payment for drugs and biologicals described in section 1842(o)(1)(C) of the Act furnished on or after January 1, 2005. For calendar quarters beginning on or after January 1, 2004, the statute requires manufacturers to report manufacturer's ASP data to CMS for Medicare Part B drugs and biologicals paid under sections 1842(o)(1)(D), 1847A, or 1881(b)(13)(A)(ii) of the Act. Manufacturers are required to submit their initial quarterly ASP data to us beginning April 30, 2004. Subsequent reports are due not later than 30 days after the last day of each calendar quarter. The types of Medicare Part B covered drugs and biologicals paid under sections 1842(o)(1)(D), 1847A, or 1881(b)(13)(A)(ii) of the Act include drugs furnished incident to a physician's service, drugs furnished under the durable medical equipment (DME) benefit, certain oral anti-cancer drugs, and oral immunosuppressive drugs.

All Medicare Part B covered drugs and biologicals paid under sections 1842(o)(1)(D), 1847A, or 1881(b)(13)(A)(ii) of the Act are subject to the ASP reporting requirements. Certain drugs and biologicals, for example, radiopharmaceuticals, are not paid under these sections of the Act and will not be subject to the ASP reporting requirements.

We are issuing this interim final rule with comment period in order to allow us to implement the manufacturer ASP reporting requirement of section 303(i)(4) of the MMA within the time frames established by the MMA. Therefore, effective April 30, 2004, this interim final rule with comment period will provide implementation guidelines for manufacturers to submit their ASP data to us. We expect to publish a proposed rule on the 2005 ASP based payment system later this year.

II. Provisions of the Interim Final Rule

[If you choose to comment on issues in this section, please include the caption "Provisions of the Interim Final Rule" at the beginning of your comments.]

In this interim final rule with comment period, we are adding a new subpart J (Submission of Manufacturer's Average Sales Price Data) to Part 414 that implements section 1927(b)(3)(A)(iii) of the Act by specifying the requirements for submission of a manufacturer's ASP data for certain drugs and biologicals covered under Part B of Title XVIII of the Act that are paid under sections 1847A, 1842(o)(1)(D), or 1881(b)(13)(A)(ii) of the Act.

A. Calculation of ASP Data

New section 1847A(c)(1) of the Act defines the manufacturer's ASP for a National Drug Code (NDC) associated with a drug or biological to be the manufacturer's sales to all purchasers in the United States (excluding units associated with sales exempted below) for the NDC for a quarter divided by the total number of units of that NDC sold by the manufacturer in that quarter (excluding units associated with sales exempted below). Section 1847A(c)(6)(A) of the Act adopts the definition of "manufacturer" set forth in section 1927(k)(5) of the Act. In that section, the term "manufacturer" means any entity that is engaged in the following (This term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law):

- Production, preparation, propagation, compounding, conversion or processing of prescription drug product, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.
- Packaging, repackaging, labeling, relabeling, or distribution of prescription drug products. (Manufacturers that also engage in wholesaler activities are required to report ASP data for those drugs that they manufacture.)

In performing this calculation, manufacturers must use the NDC at the standardized 11-digit level. For the purposes of the ASP calculation, the "unit" is the product represented by the 11-digit NDC as defined in section 1847A(b)(2)(B) of the Act. In other words, the denominator is the total number of the ASP applicable sales of that NDC.

B. Sales Exempted From ASP Calculation Other Than Nominal Sales

Section 1847A(c)(2)(A) of the Act requires that in calculating the manufacturer's ASP, a manufacturer must exclude sales that are exempt from the Medicaid best price calculation under sections 1927(c)(1)(C)(i) and 1927(c)(1)(C)(ii)(III) of the Act.

C. Sales to an Entity That Are Nominal in Amount Are Exempted From the ASP Calculation

Section 1847A(c)(2)(B) of the Act requires that sales to an entity that are nominal in amount are to be exempted from the ASP calculation. Sales to an entity that are nominal in amount are defined for purposes of section 1927(c)(1)(C)(ii)(III) of the Act for the Medicaid drug rebate program in the Medicaid drug rebate agreement.

D. Inclusion of Rebates and Other Price Concessions in the ASP Calculation

1. General Rule

Section 1847A(c)(3) of the Act requires that in calculating the manufacturer's ASP, a manufacturer must include volume discounts, prompt pay discounts, cash discounts, free goods that are contingent on any purchase requirement, chargebacks, and rebates (other than rebates under the Medicaid drug rebate program).

2. Estimation Methodology

a. Use of the Most Recent 12-Month Period Available

Section 1847A(c)(5)(A) of the Act states that the ASP is to be calculated by the manufacturer on a quarterly basis. To the extent that data on volume discounts, prompt pay discounts, cash discounts, free goods that are contingent on any purchase requirement, chargebacks, and rebates are available on a lagged basis, the manufacturer is required to apply a methodology based on the most recent 12-month period available to estimate costs attributable to these price concessions. Specifically, a manufacturer should add the volume discounts, prompt pay discounts, cash discounts, free goods that are contingent on any purchase requirement, chargebacks, and rebates for the most recent 12-month period available and divide by 4 to determine the estimate to apply in calculating the manufacturer's ASP for the quarter being submitted.

b. Allocation to Individual NDCs

For situations in which a manufacturer is unable to associate volume discounts, prompt pay discounts, cash discounts, free goods that are contingent on any purchase requirement, chargebacks and rebates, with a specific NDC, the manufacturer will allocate those discounts, rebates, free goods, and chargebacks to associated NDCs. This association will be based on the percentage of sales (in dollars) attributable to each particular NDC within the group of NDCs for which the manufacturer can associate discounts, rebates, free goods, and chargebacks.

c. Future Changes to the Methodology

As we gain more experience with the ASP system, we may seek to change the methodology to estimate costs attributable to rebates and chargebacks and the scope of price concessions for years after 2004. Pursuant to section 1847A(c)(5)(A) of the Act, the Secretary may establish a uniform methodology to estimate and apply those costs. For years after 2004, the Secretary may include in the calculation of the ASP, other price concessions which may be based upon recommendations of the Inspector General that would result in a reduction of the cost to the purchaser.

E. Reporting of ASP Data to CMS

1. Format

Manufacturers must report the ASP data to us in Microsoft Excel using the template provided in Addendum A. Manufacturers are required to calculate and report the ASP information to us at the 11-digit NDC level, along with the associated units used in the calculation of the ASP. As we gain more experience with the ASP system, we may seek to modify these requirements in the future.

2. Contacts

As indicated in Addendum B, manufacturers must submit the names of one or more individuals that we may contact if we have questions or issues with respect to the data submission.

3. Certification by the Chief Executive Officer or Chief Financial Officer

Due to the consequences of failing to submit accurate and timely ASP data, each quarterly ASP data submission must be certified by one of the following: the manufacturer's Chief Executive Officer (CEO), the manufacturer's Chief Financial Officer (CFO), or an individual who has delegated authority to sign for, and who reports directly to, the manufacturer's CEO or CFO.

F. Penalties Associated With the Failure To Submit Timely and Accurate ASP Data

Section 1847A(d)(4) of the Act specifies the penalties for misrepresentations associated with ASP data. If the Secretary determines that a manufacturer has made a misrepresentation in the reporting of ASP data, a civil money penalty in an amount of up to $10,000 may be applied for each price misrepresentation and for each day in which the price misrepresentation was applied. Section 1927 of the Act, as amended by section 303(i)(4) of the MMA, specifies the penalties associated with a manufacturer's failure to submit timely information or the submission of false information.

III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will

respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-commentprocedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. In addition, the Administrative Procedure Act normally requires a 30-day delay in the effective date of a final rule. Furthermore, the Congressional Review Act generally requires an agency to delay the effective date of a major rule by 60-days in order to allow for congressional review of the agency action. Section 1871 of the Act provides for publication of a notice of proposed rulemaking and opportunity for public comment before CMS issues a final rule. However, section 1871(b)(2)(B) of the Act provides an exception when a law establishes a specific deadline for implementation of a provision and the deadline is less than 150 days after the law's date of enactment. The MMA was enacted by Congress on November 25, 2003, and signed into law by the President on December 8, 2003. The provisions of this interim final rule with comment period are required to be implemented by April 30, 2004. Therefore, these provisions are subject to waiver of proposed rulemaking and public comment in accordance with section 1871(b)(2)(B) of the Act.

Even if section 1871(b)(2)(B) of the Act were not directly applicable here, we would find good cause to waive the requirement for publication of a notice of proposed rulemaking and public comment on the grounds that it is impracticable, unnecessary, and contrary to the public interest. This interim final rule with comment period sets forth non-discretionary provisions of MMA with respect to the calculation and submission of ASP data for certain Medicare Part B drugs and biologicals. Because the rule is generally ministerial, we believe that pursuing notice and comment is unnecessary. Moreover, because that process would delay the implementation of congressionally-mandated submissions of drug payment-related data, we find that pursuing that process would be both impracticable and contrary to the public interest.

With respect to the requirement of a 60-day delay in the effective date of any final rule pursuant to the Congressional Review Act (CRA), see 5 U.S.C. section 801, the CRA provides that the 60-day delayed effective date shall not apply to any rule "which an agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." (5 U.S.C. section 808(2)). For the reasons set forth above, we believe that additional notice and comment rulemaking on this subject would be impracticable, unnecessary, or contrary to the public interest. Therefore, we do not believe that the CRA requires a 60-day delay in the effective date of this interim final rule with comment period.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320. This is necessary to ensure compliance with a statutory deadline. We cannot reasonably comply with the normal clearance procedures because of an unanticipated event.

CMS is requesting OMB review and approval of this collection by April 23, 2004, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by April 16, 2004. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

In summary, this interim final rule with comment period requires manufacturers of Medicare Part B covered drugs and biologicals paid under sections 1847A, 1842(o)(1)(D), or 1881(b)(13)(A)(ii) of the Act to submit manufacturer's quarterly ASP data to CMS beginning April 30, 2004. This interim final rule with comment period lays out the requirements and provides the template manufacturers should use to report their ASP data to CMS.

The burden associated with the requirements in this rule is the time and effort required by manufacturers of Medicare Part B drugs and biologicals to prepare and submit the required data to CMS. We estimate that it will take approximately 4 hours for each submission. We also estimate that this requirement will affect approximately 120 manufacturers. Therefore, we estimate the total reporting burden to be approximately 480 hours per quarter for a total of 1920 hours annually.

As required by section 3504(h) of the Paperwork Reduction Act of 1995, we have submitted a copy of this document to OMB for its review of these information collection requirements.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following: Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Attn: Dawn Willinghan, CMS–1380–IFC, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850; and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer, *baguilar@omb.eop.gov*. Fax (202) 395–6974.

VI. Regulatory Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory

Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 for final rules of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. While this interim final rule with comment period does implement a new statutory data reporting requirement for drug manufacturers, the costs associated with this requirement are expected to be below the $110 million annual threshold established by section 202 of the Unfunded Mandates Reform Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR Chapter IV, as set forth below:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

■ 1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

■ 2. Part 414 is amended by adding a new subpart J to read as follows:

Subpart J—Submission of Manufacturer's Average Sales Price Data

Sec.

§ 414.800 Purpose.

This subpart implements section 1847A of the Act by specifying the requirements for submission of a manufacturer's average sales price data for certain drugs and biologicals covered under Part B of Title XVIII of the Act that are paid under sections 1842(o)(1)(D), 1847A, and 1881(b)(13)(A)(ii) of the Act.

§ 414.802 Definitions.

As used in this subpart, unless the context indicates otherwise—

Drug means both drugs and biologicals.

Manufacturer means any entity that is engaged in the following (This term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law):

(1) Production, preparation, propagation, compounding, conversion or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(2) The packaging, repackaging, labeling, relabeling, or distribution of prescription drug products.

Unit means the product represented by the 11-digit National Drug code.

§ 414.804 Basis of payment.

(a) *Calculation of manufacturer's average sales price.*

(1) The manufacturer's average sales price for a quarter for a drug or biological represented by a particular 11-digit National Drug Code must be calculated as the manufacturer's sales to all purchasers in the United States for that particular 11-digit National Drug Code (after deducting the types of items and transactions listed in paragraph (a)(2) of this section and excluding sales referenced in paragraph (a)(4) of this section) divided by the total number of units sold by the manufacturer in that quarter (after excluding units associated with sales referenced in paragraph (a)(4) of this section).

(2) In calculating the manufacturer's average sales price, a manufacturer must deduct the following types of transactions and items:

(i) Volume discounts.

(ii) Prompt pay discounts.

(iii) Cash discounts.

(iv) Free goods that are contingent on any purchase requirement.

(v) Chargebacks and rebates (other than rebates under the Medicaid drug rebate program).

(3) To the extent that data on volume discounts, prompt pay discounts, cash discounts, free goods that are contingent on any purchase requirement, chargebacks and rebates (other than rebates under the Medicaid drug rebate program) are available on a lagged basis, the manufacturer should add the data for the most recent 12-month period available and divide by 4 to determine the estimate to apply in calculating the manufacturer's average sales price for the quarter being submitted.

(4) In calculating the manufacturer's average sales price, a manufacturer must exclude sales that are exempt from the Medicaid best price calculation under sections 1927(c)(1)(C)(i) and 1927(c)(1)(C)(ii)(III) of the Act.

(5) The manufacturer's average sales price must be calculated by the manufacturer every calendar quarter and submitted to CMS within 30 days of the close of the quarter. The first quarter submission must be submitted by April 30, 2004. Subsequent reports are due not later than 30 days after the last day of each calendar quarter.

(6) Each report must be certified by one of the following:

(i) The manufacturer's Chief Executive Officer (CEO).

(ii) The manufacturer's Chief Financial Officer (CFO).

(iii) An individual who has delegated authority to sign for, and who reports directly to, the manufacturer's CEO or CFO.

§ 414.806 Penalties associated with the failure to submit timely and accurate ASP data.

Section 1847A(d)(4) specifies the penalties associated with misrepresentations associated with ASP data. If the Secretary determines that a manufacturer has made a misrepresentation in the reporting of ASP data, a civil money penalty in an amount of up to $10,000 may be applied for each price misrepresentation and for each day in which the price misrepresentation was applied. Section 1927(b)(3)(C) of the Act, as amended by section 303(i)(4) of the MMA, specifies the penalties associated with a manufacturer's failure to submit timely information or the submission of false information.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 4, 2004.

Dennis G. Smith,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: March 23, 2004.

Tommy G. Thompson,

Secretary.

BILLING CODE 4120–01–P

Addendum A

Manufacturer's Name	National Drug Code	Manufacturer's Average Sales Price	Number of Units

Addendum B

The Centers for Medicare & Medicaid Services
Average Sales Price Data

Name of Drug or Biological Manufacturer (as "manufacturer" is defined in section 1927(k)(5) of the Social Security Act):

Legal Address:

Manufacturer Contact(s):
Name: Email:

Title: Fax:

Address: Telephone No.:

Name: Email:

Title: Fax:

Address: Telephone No.:

I certify that the reported Average Sales Prices were calculated accurately and that all information and statements made in this submission are true, complete, and current to the best of my knowledge and belief and are made in good faith. I understand that information contained in this submission may be used for Medicare reimbursement purposes.

Name of CEO, CFO or Authorizing Official:
Title:

_____ _____
Signature Date

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-0921. The time required to complete this information collection is estimated to average 1 hour per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Baltimore, Maryland 21244-1850.

[FR Doc. 04–7715 Filed 4–1–04; 11:24 am]
BILLING CODE 4120–01–C

FEDERAL MARITIME COMMISSION

46 CFR Part 515

[Docket No. 04–02]

Optional Rider for Proof of Additional NVOCC Financial Responsibility

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its regulations governing proof of financial responsibility for ocean transportation intermediaries to allow an optional rider to be filed with a licensed non-vessel-operating common carrier's proof of financial responsibility to provide additional proof of financial responsibility for such carriers serving the U.S. oceanborne trade with the People's Republic of China.

EFFECTIVE DATE: April 6, 2004.

FOR FURTHER INFORMATION CONTACT: Amy W. Larson, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1018, Washington, DC 20573–0001, (202) 523–5740, E-mail: *GeneralCounsel@fmc.gov.*

Sandra A. Kusumoto, Director, Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW., Room 970, Washington, DC 20573–0001, (202) 523–5787, E-mail: *otibonds@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This rulemaking proceeding was initiated on January 23, 2004, with the issuance by the Federal Maritime Commission ("FMC" or "Commission") of a Notice of Proposed Rulemaking ("NPR"). 69 FR 4271 (January 29, 2004). Comments on the NPR were to be due on February 20, 2004, but requests for

extension from the American Surety Association ("ASA") and the Surety Association of America ("SAA") were granted on February 19, 2004, and the comment period was extended until February 27, 2004. The Commission also invited interested persons to make oral presentations in addition to filing written comments; however, no such presentations or meetings were made. The Commission received comments in response to the NPR from the National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA"), ASA and SAA.

The NPR arose from a Commission order issued January 22, 2004 granting in part and denying in part a petition for rulemaking from NCBFAA. Petition No. P10–03, *Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Rulemaking.* NCBFAA, the primary trade association representing licensed ocean transportation intermediaries ("OTIs") in the U.S., who states that its members are linked to 90% of the U.S. oceanborne cargo, petitioned the Commission to change its rules to effectuate concessions made by the People's Republic of China ("PRC" or "China") in a recently concluded bilateral Maritime Agreement between the United States and China ("Agreement"). The Agreement's associated Memorandum of Consultations provides that the Chinese government will not require U.S. non-vessel-operating common carriers ("NVOCCs") to make a cash deposit in a Chinese bank, as long as the NVOCC: (1) Is a legal person registered by U.S. authorities; (2) obtains an FMC license as an NVOCC; and (3) provides evidence of financial responsibility in the total amount of RMB 800,000 or U.S. $95,000.[1] Therefore, it appears that an FMC-licensed U.S. NVOCC that voluntarily provides an additional surety bond in the amount of $21,000, which by its conditions is responsive to potential claims of the Chinese Ministry of Communications ("MOC") (as well as other Chinese agencies) for violations of the Regulations of the People's Republic of China on International Maritime Transportation ("RIMT"),[2] would be able to register in the PRC without paying the cash deposit otherwise required by Chinese law and regulation. However, because current FMC regulations do not provide any mechanism for NVOCCs to file proof of such additional financial responsibility with the FMC, the Commission proposed to amend its regulations in order to permit licensed NVOCCs to file such additional proof in the form of optional riders to the required NVOCC bond (hereinafter "optional bond riders").

The proposed rule granted NCBFAA's petition in most substantive respects. As requested by NCBFAA, the Commission proposed to amend its rules to add a new subsection to provide for the optional rider at § 515.25. 69 FR at 4272–73. As suggested by NCBFAA, the Commission proposed to provide for group surety bonds by the addition of § 515.25(c), changes to § 515.21(b), and the addition of Appendix F. *Id.* Finally, the Commission declined to propose changes requested by NCBFAA that would have the effect of creating a procedure by which the Commission would administer the payment of claims against these optional riders. *Id.* at 4772. The Commission found that it would be inappropriate for it to be involved in the collection of claims arising from decisions of the MOC, whether involving reparations, fines or penalties. *Id.* The Commission noted that the issuers of such bonds might wish to propose language to be included in the optional rider itself that would relate to procedures by which claims may be exercised against the optional rider, such as whether the English language must be used for all claims, whether the surety will not pay any claim earlier than 30 days after it has been notified of the claim, or what documentation the surety will require before paying a claim. The Commission invited comments on that issue particularly. *Id.*

II. Summary of the Comments

The Commission received three comments, from NCBFAA, ASA and SAA, generally in support of the proposed rule. All of the commenters propose that the Commission include further language in the rule that would limit the scope and application of the optional bond rider.

NCBFAA supports the NPR and urges the Commission to adopt the proposed rule in its entirety. NCBFAA at 2. The proposed rule, NCBFAA believes, is essential to reduce regulatory burdens on small and medium-sized NVOCCs that would otherwise result from the Chinese regulations. *Id.* Furthermore, NCBFAA points out, because the new rule is optional, it will not impose any burden on NVOCCs that either do not engage in the U.S./China trade or prefer to meet their obligations under Chinese law in a different manner. *Id.*

The commenters urge the Commission to narrow the scope and coverage of the optional bond rider. SAA and ASA request that the Commission include further specific requirements for the optional bond rider, as their members must consider the risks and uncertainty of the underwriting of such an instrument and NCBFAA appears to agree with this assertion. SAA at 1; ASA at 12; NCBFAA at 3. ASA and NCBFAA agree that the optional bond rider should only be limited to "fines and penalties" imposed by MOC for violations of the RIMT. ASA at 5; NCBFAA at 3.

ASA argues that the optional bond rider should only be available in the U.S. bilateral trades between the U.S. and the PRC. ASA at 5. This is consistent, ASA asserts, with limitations in the "base" bond[3] which cover only "shipments between the U.S. and a foreign port" but not for shipments or activities occurring between foreign to foreign points. *Id.* To support this assertion, ASA relies on the Memorandum of Consultations referenced in the NPR which states, "[t]he bond required by the FMC covers liabilities for transportation-related activities in the U.S./China trade (as well as other U.S./foreign trades)." ASA at 6 (quoting Memorandum of Consultations at 2). Further, ASA contends the rider should only be available to pay "fines and penalties" assessed against a U.S. NVOCC operating in the U.S.-China trades, and to allow otherwise would be inconsistent with the FMC-filed main bond. ASA at 6.

The commenters also request that the Commission include in the rule further guidance regarding the procedure for claims against the optional rider. SAA at 1–2; ASA at 7; NCBFAA at 3–4. SAA believes that if the Commission does not include such guidance, then the general risk will be increased and such riders may be less available. SAA further asserts that, as an obligee on the main bond, the Commission has an interest in ensuring the claims process is fair and

[1] The Agreement and Memorandum of Consultations can be found on the Maritime Administration's Web site at *http://www.marad.dot.gov/Headlines/announcements/China/China.htm.*

[2] Promulgated by Decree No. 335 of the State Council of the People's Republic of China, on December 11, 2001, and effective as of January 1, 2002. An English translation is available at: *http://english.mofcom.gov.cn/article/200211/20021100050858_1.xml.* MOC has issued Implementing Rules of the Regulations of the People's Republic of China on International Maritime Transportation, promulgated by Decree No. 1 of the MOC on January 20, 2003, and effective as of March 1, 2003. An English translation of these Implementing Rules is available at: *http://www.moc.gov.cn/zhinengbm/sys/1026.htm.*

[3] Bonds obtained to satisfy the requirements of section 19 of the Shipping Act of 1984, 46 U.S.C. app. 1718, are hereinafter referred to as "main bonds."

definite. SAA at 1–2. SAA proposes that the Commission set forth, either in the regulation or in the rider, requirements that all claims against the optional rider be submitted by the MOC (as opposed to any other Chinese government agency) with documentation substantiating the claim in English, and that any litigation regarding the claim be heard by a U.S. Federal Court. *Id.* SAA also notes the rule as proposed does not contain any indication whether the claim may be paid in U.S. dollars. *Id.* at 1.

ASA and NCBFAA suggest that the optional bond rider should incorporate the claims procedures in 46 CFR 515.23, which provides a time line for review and payment of claims, notice requirements, etc. ASA at 7; NCBFAA at 3–4. ASA asserts that the Commission's rules should state that claims against the optional bond rider must: sufficiently identify the NVOCC (name and bond number); state the amount sought, how calculated, date of violation, and specific law, rule or regulation violated; include a sufficient, detailed summary of the proceedings before the Chinese regulatory authority; be in English, with which NCBFAA agrees (NCBFAA at 3); and be presented to the surety at its address listed on the rider. ASA at 7–8.

ASA is confused by the proposed rule's language regarding the Commission's intentions not to be a depository or distributor as to the optional rider document itself. *Id.* at 8. ASA objects to the proposed requirements for written notice of termination in Subpart C regarding notice of termination. *Id.* Further, ASA asserts that the declaration that the Commission will not "serve as a depository or distributor to third parties of optional bond rider" is inconsistent with the Commission's "mandate that proof of financial responsibility be filed with the Commission." *Id.* (citing 46 U.S.C. app. 1718). The proposed language, ASA argues, will prejudice sureties because it is inconsistent with the date of termination of the main bond. *Id.* at 8–9. As an alternative, ASA proposes that the Commission maintain a copy of the notice of termination and that such notice be included as part of the main bond file so that the Commission has a complete record of the dates upon which the optional bond rider became effective and was terminated. *Id.* at 9. In addition, ASA objects to the language in the proposed rule that makes the termination date of the optional rider effective 30 days after either receipt by the Commission of a notice, or transmission of the notice to the MOC, whichever occurs later. Using the "whichever occurs later" standard, ASA argues, is prejudicial, arbitrary and unfair to the surety who is required to provide notice to the Commission but termination is effective only after MOC receives it. *Id.* ASA conjectures that notices of termination will follow a surety's decision to cancel the optional bond rider bond for underwriting reasons, the failure of the bond principal to respond to a claim, or an MOC fine or penalty. The surety may wish to terminate both the main bond and the optional bond rider at the same time, thus, ASA concludes, receipt of the notice to the Commission should trigger termination, and subsequent notice to MOC should not preempt the effectiveness of the notice to the Commission. *Id.* at 9–10. Termination of the optional bond rider, ASA asserts, should become effective 30 days after receipt of notice by the Commission or transmission of the notice to MOC, whichever occurs earlier. *Id.* at 10.

Furthermore, ASA believes that it would be more prudent to require whichever party (principal or surety) provides notice of termination to the Commission also to provide such notice to MOC. *Id.* at 11. Otherwise, ASA worries, the Commission would be obligating the surety to notify MOC when the surety itself may not be aware of the termination filed with the Commission by the principal. *Id.*

ASA proposes that the optional bond rider include a sum certain, namely, $21,000.00. *Id.* at 10. This change, ASA recommends, would accord with the supplementary information of the NPR and be consistent with NCBFAA's petition. *Id.* at 10–11. ASA suggests that the Commission revise proposed § 515.25(c) to indicate that when an optional bond rider is used that it must be filed with the Commission. *Id.* at 1. Finally, ASA is confused by reference in the proposed Appendix F (group bond optional rider) which refers to an "Appendix A." ASA recommends the Commission's rule ensure that references to any Appendix in either form FMC–69 or FMC–69A be clear as to which entities will be covered. *Id.* at 12.

III. Discussion

We believe that several of the questions raised by the comments may be resolved through close examination of the language of the Memorandum of Consultations [4] associated with the Agreement. Specifically, the Chinese Government has stated that it will not "require [a] U.S. NVOCC[] to make a cash deposit in a Chinese bank, as a prerequisite to apply to the Chinese Ministry of Communications (MOC) to engage in non-vessel operating service between U.S. and Chinese ports" if such applicants provide authentic and valid documentation that they: (1) Are "legal person[s] registered by U.S. authorities;" (2) have "obtain[ed] an FMC license evidencing NVOCC eligibility;" and (3) "provide[] evidence of financial responsibility in the total amount of 800,000RMB or $96,000."

All of these requirements stem from Chinese law and regulation; no part of these requirements arise from the Shipping Act or the Commission's regulations. Rather, the Commission is providing this opportunity for eligible NVOCCs to add such optional bond riders to their currently filed FMC bonds to enable them to benefit from the commitments made in connection with the Agreement. We are hopeful that this will prove to be a temporary measure until other, less burdensome forms of financial responsibility to the cash deposit become available in China and the Chinese law and regulations are amended to reflect that availability.

We agree with the commenters' suggestion that the scope and coverage of the optional bond rider form can be clarified and narrowed. With respect to the concerns about the geographic scope of the optional bond rider, we agree that the optional bond rider is subject to the limitations of the main bond, whose coverage includes only the U.S.-foreign trades. We agree, therefore, that the coverage of the optional bond rider should be limited to the U.S.-China trade. This limitation is reflected in Appendices E and F to the Final Rule.

The Memorandum of Consultations' use of the term "total amount," and its recognition that Chinese shippers are able to assert claims for non-performance against the main bond, may indicate that the Chinese negotiators anticipated that additional coverage would be necessary to cover only fines and penalties assessed under the RIMT to which the main bond is not subject. As all FMC-licensed NVOCCs are currently required to carry a minimum of $75,000.00 of financial responsibility, the difference to reach the total required by MOC ($96,000) is $21,000.00. The Final Rule adopts the commenters' proposal that the optional bond rider forms include the sum of $21,000.00. This appears consistent with the text of the Memorandum of Consultations that "financial responsibility in the total amount of

[4] The Memorandum of Consultations is available at the Web site of the Maritime Administration: *http://www.marad.dot.gov/Headlines/announcements/China/China.htm.*

800,000RMB or $96,000" must be provided.

The language of the Memorandum of Consultations also suggests that the Chinese would not require any particular currency, but would accept payment in either U.S. Dollars or Renminbi Yuan ("RMB"). Therefore, the optional bond rider forms in Appendices E and F to the Final Rule include a provision stating that either currency may be used, at the option of the surety.

The NPR stated that the Commission found it inappropriate to be involved in the collection of claims arising under foreign law. 69 FR 4272. The Commission requested comments with respect to adding such procedures to the language of the optional bond rider forms. The commenters suggest that the Commission should require claims against the optional bond rider to be subject to the provisions of 46 CFR 515.23(b) and 545.3.[5] Section 19(b)(3) of the Shipping Act directs the Commission to protect the interests of claimants, principals and sureties "with respect to the process of pursuing claims against [OTI] bonds * * * through court judgments." 46 U.S.C. app. 1718(b)(3). That section is designed to ensure that the bond coverage is used for damages arising out of an NVOCC's transportation-related activities. In contrast, the optional bond rider here is not so limited, but rather, is to cover fines and penalties imposed by MOC. Therefore, the Commission declines to make the claim procedures at 46 CFR 515.23(b) applicable to the coverage provided by the optional bond rider.

We understand that the uncertainties of the risks involved may increase the cost of the security. However, the assessment of the risks associated with issuing these instruments will have to be determined by the surety who issues them. While the Commission is optimistic that the marketplace will make such instruments available to the NVOCCs who seek them, it cannot require sureties to provide them or dictate at what cost they will be provided. We conclude that it would be inappropriate for the Commission to prescribe by rule any claims procedures for another government seeking to enforce its laws and regulations.

In response to ASA's comments, the Commission, in order to give effect to the provisions of the Agreement, agrees to act as a repository of the document indicating proof of filing of an optional bond rider. However, as it does with regard to the main bond under § 515.23(c), the Final Rule indicates that, for the optional bond rider, the Commission "shall not serve as depository or distributor to third parties of bond, guaranty, or insurance funds in the event of any claim, judgment, or order for reparation." Thus, the bonds are filed with the Commission, but the Commission is not responsible for disbursing funds in the event of a claim. The change in § 515.23(d) in the Final Rule clarifies this.

The Commission also finds that certain aspects of the commenters' recommendations regarding notice and date of termination of the optional bond rider valid. As discussed above, if the main bond is terminated, which may be done by either the principal or surety, it follows that the optional bond rider would also be terminated. The Commission's rules regarding termination of the main bond are found at 46 CFR 515.26. The present practice of the Commission's staff is to notify principals, sureties and tariff publishers when it receives termination notices for main bonds. This notice includes the date upon which termination of the main bond becomes effective. In a case in which a main bond also has an optional bond rider as described in this Final Rule, the Commission will add MOC as a recipient of such termination notices.

ASA and SAA express concern that if the principal informs the Commission, but does not inform the MOC of the termination of an optional bond rider, the termination of the optional bond rider might not take effect until 30 days after the surety itself learns of the principal's notice of termination to the Commission. As the Commission will serve as the principal point of contact for the effectiveness of the optional bond rider, and will indicate on its Web site the existence of optional bond riders, it must have information regarding termination. However, as the Chinese Government is the likely claimant against and beneficiary of the optional bond rider, we also find it reasonable to require that the party terminating the optional bond rider notify MOC of that termination as well.

To that end, the procedure for termination shall be notification to the Commission accompanied by proof of transmission to MOC.[6] Notification will not be deemed complete unless accompanied by proof of transmission of notice of termination to MOC. The 30-day period will not begin until the Commission receives both notification and proof of transmission to MOC. We believe that the language in Appendices E and F in the Final Rule, requiring whichever party terminates the optional bond rider to provide proof that it has sent such notification also to MOC, sufficiently addresses the concern expressed by ASA and SAA.

ASA questions the possible effect of exhaustion of the optional bond rider on the main bond. The optional bond rider supplements the main bond. Therefore, the fact that the amount available to MOC under the optional bond rider may be exhausted will have no effect on the availability of coverage of the main bond. Unlike the optional bond rider, the main bond is not available to pay claims based solely upon Chinese law.

The Commission will indicate the filing of optional bond riders on its OTI list, located at *http://www.fmc.gov/oti/oti_index2.htm*, which includes all OTIs licensed by the Commission.[7] The optional bond rider forms will also be available at the Commission's Web site at *http://www.fmc.gov/Forms.htm#FF*.

The Administrative Procedure Act ("APA") provides that "the required publication of a substantive rule shall not be made less than 30 days before its effective date." 5 U.S.C. 553. However, the APA further provides an exception for rulemakings "as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d). Accordingly, the Commission finds that good cause exists for waiving the customary delay of 30 days after the publication of a final rule before it becomes effective.

This Final Rule is provided at the request of the entities regulated in the hopes that it will provide an alternative to the requirements of the laws and regulations of the Government of China pursuant to the recent bilateral Maritime Agreement. This Final Rule provides an avenue for licensed NVOCCs to file with the Commission proof of additional

[5] 46 CFR 545.3, an interpretive rule referring to § 515.23(b), provides:

A claimant seeking to settle a claim in accordance with § 515.23(b)(1) of this chapter should promptly provide to the financial responsibility provider all documents and information relating to and supporting its claim for the purpose of evaluating the validity and subject matter of the claim.

[6] Acceptable proof of transmission will include copies (may be electronic) of signed, dated return postal receipts, copies of successful fascimile transmissions or electronic mail receipts.

[7] This list also includes foreign unlicenced NVOCCs, which are required to maintain financial responsibility and a tariff. NVOCCs are required by Commission regulation 46 CFR 520.11(a) to include information in its publicly-available tariff regarding financial responsibility, including the type of bond, the name and address of the surety, the bond number, and (where applicable) the name and address of the group or association providing coverage. The location of an NVOCC's tariff publication can be found at the Commission's Web site, Form FMC–1. *http://www.fmc.gov/fmcftrnl/scripts/ExtReports.asp?tariffClass=oti.*

financial responsibility in the form of the optional bond rider. We are optimistic that, over time, alternative forms of financial responsibility will become available in China, rendering this optional bond rider unnecessary. For the present, however, we find that there exists adequate public interest in allowing these instruments to be filed with the Commission as soon as possible and that there exists good cause to make this rule effective upon publication. This Final Rule will become effective upon publication in the **Federal Register**.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant impact on a substantial number of small entities. In its NPR, the Commission stated its intention to certify this rulemaking because the proposed changes establish an optional provision for U.S. licensed NVOCCs, which may be used at their discretion. While these businesses qualify as small entities under the guidelines of the Small Business Administration, the rule poses no economic detriment, but rather provides a more cost-effective alternative than would otherwise be available to assist U.S. licensed NVOCCs with their business endeavors in the PRC. As such, the rule helps to promote U.S. business interests in the PRC and facilitate U.S. foreign commerce. No comments were filed to dispute this certification. Therefore, the certification remains valid.

This regulatory action is not a "major rule" under 5 U.S.C. 804(2).

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980, as amended. Public reporting burden for this collection of information is estimated to be 1 hour per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Austin L. Schmitt, Deputy Executive Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, Washington, DC 20503.

List of Subjects in 46 CFR Part 515

Common carriers, Exports, Non-vessel-operating common carriers, Ocean transportation intermediaries, Financial responsibility requirements, Reporting and recordkeeping requirements, Surety bonds.

■ Accordingly, the Federal Maritime Commission amends 46 CFR part 515 subpart C as follows:

Subpart C—Financial Responsibility Requirements; Claims against Ocean Transportation Intermediaries

■ 1. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

■ 2. Amend §515.21(b) by adding a new sentence at the end as follows:

§ 515.21 Financial responsibility requirements.

(b) * * * A group or association of ocean transportation intermediaries may also file an optional bond rider as provided for by § 515.25 (c).

* * * * *

■ 3. Amend §515.23 by adding paragraph (d) to read as follows:

§ 515.23 Claims against an ocean transportation intermediary.

* * * * *

(d) *Optional bond riders.* The Federal Maritime Commission shall not serve as a depository or distributor to third parties of funds payable pursuant to optional bond riders described in § 515.25(c).

■ 4. Amend §515.25 by adding paragraph (c) to read as follows:

§ 515.25 Filing of proof of financial responsibility.

* * * * *

(c) *Optional bond rider.* Any NVOCC as defined by § 515.2(o)(2), in addition to a bond meeting the requirements of § 515.21(a)(2), may obtain and file with the Commission proof of an optional bond rider, as provided for in appendix E or appendix F of this part.

■ 5. Add Appendix E to read as follows:

Appendix E to Subpart C of Part 515—Optional Rider for Additional NVOCC Financial Responsibility (Optional Rider to Form FMC–48) [FORM 48A]

FMC–48A, OMB No. 3072–0018, (04/06/04)

Optional Rider for Additional NVOCC Financial Responsibility [Optional Rider to Form FMC–48]

RIDER

The undersigned [_____], as Principal and [_____], as Surety do hereby agree that the existing Bond No. [_____] to the United States of America and filed with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 is modified as follows:

1. The following condition is added to this Bond:

a. An additional condition of this Bond is that $21,000 (payable in U.S. Dollars or Renminbi Yuan at the option of the Surety) shall be available to pay any fines and penalties for activities in the U.S.-China trades imposed by the Ministry of Communications of the People's Republic of China ("MOC") or its authorized competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government or the State Administration of Industry and Commerce pursuant to the Regulations of the People's Republic of China on International Maritime Transportation and the Implementing Rules of the Regulations of the PRC on International Maritime Transportation promulgated by MOC Decree No. 1, January 20, 2003. Such amount is separate and distinct from the bond amount set forth in the first paragraph of this Bond. Payment under this Rider shall not reduce the bond amount in the first paragraph of this Bond or affect its availability.

b. The liability of the Surety shall not be discharged by any payment or succession of payments pursuant to section 1 of this Rider, unless and until the payment or payments shall aggregate the amount set forth in section 1a of this Rider. In no event shall the Surety's obligation under this Rider exceed the amount set forth in section 1a regardless of the number of claims.

c. This Rider is effective the [_____] day of [_____], 200 [_____], and shall continue in effect until discharged, terminated as herein provided, or upon termination of the Bond in accordance with the sixth paragraph of the Bond. The Principal or the Surety may at any time terminate this Rider by written notice to the Federal Maritime Commission at its offices in Washington, D.C., accompanied by proof of transmission of notice to MOC. Such termination shall become effective thirty (30) days after receipt of said notice and proof of transmission by the Federal Maritime Commission. The Surety shall not be liable for fines or penalties imposed on the Principal after the expiration of the 30-day period but such termination shall not affect the liability of the Principal and Surety for any fine or penalty imposed prior to the date when said termination becomes effective.

2. This Bond remains in full force and effect according to its terms except as modified above.

In witness whereof we have hereunto set our hands and seals on this [_____] day of [_____], 200 [_____], [Principal], By:

[Surety], By:

Privacy Act and Paperwork Reduction Act Notice

The collection of this information is authorized generally by section 19 of the Shipping Act of 1984, 46 U.S.C. app. 1718.

This is an optional form. Submission is completely voluntary. Failure to submit this form will in no way impact the Federal Maritime Commission's assessment of your firm's financial responsibility.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Copies of this form will be maintained until the corresponding license has been revoked.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: Recordkeeping, 20 minutes; Learning about the form, 20 minutes; Preparing and sending the form to the FMC, 20 minutes.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001 or e-mail: *secretary@fmc.gov*.

■ 6. Add Appendix F to read as follows:

Appendix F to Subpart C of Part 515—Optional Rider for Additional NVOCC Financial Responsibility for Group Bonds [Optional Rider to Form FMC–69]

FMC–69A, OMB No. 3072–0018 (04/06/04)

Optional Rider for Additional NVOCC Financial Responsibility for Group Bonds [Optional Rider to Form FMC–69]

RIDER

The undersigned [_____], as Principal and [_____], as Surety do hereby agree that the existing Bond No. [_____] to the United States of America and filed with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 is modified as follows:

1. The following condition is added to this Bond:

a. An additional condition of this Bond is that $ [_____](payable in U.S. Dollars or Renminbi Yuan at the option of the Surety) shall be available to any NVOCC enumerated in an Appendix to this Rider to pay any fines and penalties for activities in the U.S.-China trades imposed by the Ministry of Communications of the People's Republic of China ("MOC") or its authorized competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government or the State Administration of Industry and Commerce pursuant to the Regulations of the People's Republic of China on International Maritime Transportation and the Implementing Rules of the Regulations of the PRC on International Maritime Transportation promulgated by MOC Decree No. 1, January 20, 2003. Such amount is separate and distinct from the bond amount set forth in the first paragraph of this Bond. Payment under this Rider shall not reduce the bond amount in the first paragraph of this Bond or affect its availability. The Surety shall indicate that $21,000 is available to pay such fines and penalties for each NVOCC listed on appendix A to this Rider wishing to exercise this option.

b. The liability of the Surety shall not be discharged by any payment or succession of payments pursuant to section 1 of this Rider, unless and until the payment or payments shall aggregate the amount set forth in section 1a of this Rider. In no event shall the Surety's obligation under this Rider exceed the amount set forth in section 1a regardless of the number of claims.

c. This Rider is effective the [_____] day of [_____], 200[_____], and shall continue in effect until discharged, terminated as herein provided, or upon termination of the Bond in accordance with the sixth paragraph of the Bond. The Principal or the Surety may at any time terminate this Rider by written notice to the Federal Maritime Commission at its offices in Washington, DC., accompanied by proof of transmission of notice to MOC. Such termination shall become effective thirty (30) days after receipt of said notice and proof of transmission by the Federal Maritime Commission. The Surety shall not be liable for fines or penalties imposed on the Principal after the expiration of the 30-day period but such termination shall not affect the liability of the Principal and Surety for any fine or penalty imposed prior to the date when said termination becomes effective.

2. This Bond remains in full force and effect according to its terms except as modified above.

In witness whereof we have hereunto set our hands and seals on this [_____] day of [_____], 200 [_____], [Principal], :By [Surety], By:

Privacy Act and Paperwork Reduction Act Notice

The collection of this information is authorized generally by Section 19 of the Shipping Act of 1984, 46 U.S.C. app. 1718.

This is an optional form. Submission is completely voluntary. Failure to submit this form will in no way impact the Federal Maritime Commission's assessment of your firm's financial responsibility.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Copies of this form will be maintained until the corresponding license has been revoked.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: Recordkeeping, 20 minutes; Learning about the form, 20 minutes; Preparing and sending the form to the FMC, 20 minutes.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001 or e-mail: *secretary@fmc.gov*.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–7782 Filed 4–5–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

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

[WT Docket No. 01–319; FCC 04–23]

Practice and Procedure, Miscellaneous Wireless Communications Services, Experimental Radio, Auxiliary, Special Broadcast and Other Program Distributional Services, Private Land Mobile Radio Services, Fixed Microwave Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its rules to provide for immediate processing of applications that may implicate Quiet Zones, in the event that the applicant indicates that it has obtained consent of the Quiet Zone entity. The document also clarifies that applicants may provide notification to and begin coordination with Quiet Zone entities, where required, in advance of filing an application with the Commission. Further, the Commission permits part 101 applicants to initiate conditional operation, provided they have obtained prior consent of the Quiet Zone entity to the extent required, and are otherwise eligible to initiate conditional operations over the proposed facility. Further, the Commission clarifies that either the applicant or the applicant's frequency coordinator may notify and initiate any required coordination proceedings with the Quiet Zone entity.

DATES: Effective June 7, 2004, except for 47 CFR 1.924(a)(2) and 1.924(d)(2) which contain information collection modifications that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of that section.

FOR FURTHER INFORMATION CONTACT: Roger Noel or Linda Chang, Wireless Telecommunications Bureau, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal

Communications Commission's *Report and Order*, FCC 04–23, adopted February 4, 2004, and released February 12, 2004. The full text of the *Report and Order* is available for public inspection during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor: Qualex International, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com*.

Synopsis of Report and Order

I. Background

1. Section 1.924 of the Commission's rules sets forth procedures regarding coordination of Wireless Telecommunications Services applications and operations within areas known as "Quiet Zones." Such zones are areas where "it is necessary to restrict radiation so as to minimize possible impact on the operations of radio astronomy or other facilities that are highly sensitive to interference." *See* 47 CFR 1.924(a). The facilities covered by § 1.924 are: (i) The National Radio Astronomy Observatory (NRAO) site in Green Bank, Pocahontas County, West Virginia, and the Naval Radio Research Observatory (NRRO) site in Sugar Grove, Pendleton County, West Virginia; (ii) the Table Mountain Radio Receiving Zone of the Research Laboratories of the Department of Commerce (Table Mountain) in Boulder County, Colorado; (iii) FCC field offices used for monitoring activities; and (iv) the Arecibo Observatory (Arecibo) in Puerto Rico. Commenters have noted that the emissions that radio astronomy facilities are designed to receive are extremely weak; a typical radio telescope receives approximately one-trillionth of a watt from even the strongest cosmic source and can receive sources one million times weaker still. Because radio astronomy receivers are designed to pick up such weak signals, these facilities are extremely vulnerable to interference from spurious and out-of-band emissions.

2. In order to protect Quiet Zones from harmful interference, § 1.924 sets forth a variety of required or recommended procedures for notifications to and/or coordination of proposed frequency use with an affected site. The facilities affected can be separated into two categories: areas in which applicants are required to provide notification of any proposed operations prior to authorization, and areas for which the Commission recommends advanced consultation. For facilities requiring notification, specifically NRAO, NRRO and Arecibo, § 1.924 provides that notification must occur concurrently with the filing of the application, and that the affected facility must be given an opportunity to comment on the application. *See* 47 CFR 1.924(a)(2), (d)(2). For example, § 1.924(a) provides that an entity filing an application to operate a new or modified station in the NRAO or NRRO Quiet Zone areas must simultaneously provide notification to the applicable entity along with technical details of its proposed operation. The filing of the application triggers a 20-day comment period during which the applicable Quiet Zone is given an opportunity to file comments or objections in response to the notifications. For other facilities, such as Table Mountain and FCC Field Monitoring Facilities, the Commission's rules do not require that notification and opportunity to object be afforded to the affected facility prior to grant of the application. *See* 47 CFR 1.924 (b), (c). Rather than require notification and a 20-day comment period for the latter areas, the Commission urges that advance consultation be made with the applicable entity in order to avoid interference.

3. In the *2000 Biennial Regulatory Review Updated Staff Report (2000 Biennial Review Report)*, the Commission determined that it should initiate a rulemaking to review the application procedures for Quiet Zone areas and determine whether the Commission could make these procedures more efficient. In November 2001, the Commission issued a *Notice of Proposed Rulemaking*, 16 FR 20690, December 21, 2001 (*NPRM*) seeking to identify and address ways of streamlining the processing of such applications, while simultaneously ensuring the continued protection of these sensitive areas. Review of Quiet Zones Application Procedures, *Notice of Proposed Rulemaking*.

II. Discussion

A. Streamlining Quiet Zone Application Processing

4. *Background.* In the *NPRM*, the Commission inquired whether, in situations in which Quiet Zone issues are implicated, it is appropriate to expedite application processing if the application provides written consent, where required, from the applicable Quiet Zone entity. As noted, §§ 1.924(a) and 1.924(d) set out a 20-day period during which the NRAO, NRRO or Arecibo may lodge a comment or objection in response to a notification regarding proposed operation. The Commission suggested that in such situations, if a wireless operator obtains written consent as necessary from the applicable entity following consultation. the Commission could process the application without awaiting the end of the 20-day period.

5. *Discussion.* The Commission concludes that, in situations where notification is required, it is appropriate to amend its rules to provide for the immediate processing of applications where the applicant has obtained the prior written consent of the relevant Quiet Zone entity. Waiting for the expiration of the 20-day waiting period in cases in which the applicant has consulted with, and obtained approval from, the Quiet Zone entity, unduly delays the processing of applications. The underlying basis of the waiting period was to provide affected Quiet Zone entities an interval within which to lodge comments or objections regarding interference concerns with the Commission. Delaying the processing of applications until the expiration of the waiting period serves no purpose in situations in which the Quiet Zone entity has indicated that it has no objections to the technical details of the proposed operation. Where prior written consent is not obtained, Quiet Zone entities retain the full 20-day period to file comments or objections regarding a proposed operation. Further, in order to avoid any confusion as to the scope of a Quiet Zone entity's consent, the written consent from the Quiet Zone entity must include the same technical parameters specified in the application.

B. Coordination in Advance of Application Filing

6. *Background.* In the *NPRM*, the Commission requested comment on whether to allow parties to provide notification to and begin coordination with affected entities, where required, in advance of filing an application with the Commission. As noted, §§ 1.924(a)(2) and 1.924(d)(2) require an applicant to notify NRAO, NRRO or the Arecibo Observatory at the same time it makes a filing with the Commission. In the *NPRM*, the Commission tentatively concluded that advance coordination with these Quiet Zone entities would help to expedite application processing and the initiation of operations, while also ensuring that Quiet Zones are protected.

7. *Discussion.* The Commission concludes that applicants and Quiet Zone entities alike will benefit from advance notification and coordination. The Commission finds that prior

notification and coordination between applicants and Quiet Zone entities should be encouraged because such coordination would allow parties to directly address any interference concerns prior to filing, thereby avoiding the possibility that a Quiet Zone entity will object after an application has been filed. This in turn would facilitate the expeditious processing of applications by the Commission. The commenters strongly support the idea of prior coordination, noting that advance notification and coordination has already been occurring on an informal basis, and emphasizing that, based on previous experience, the earlier that coordination occurs between carriers and Quiet Zone entities, the better the result for all parties. Accordingly, §§ 1.924(a)(2) and 1.924(d)(2) are modified to provide that notice may be provided to the affected Quiet Zone entity prior to, or simultaneously with, a Commission filing.

8. The Commission also sought comment on the appropriate length of time that should be prescribed for such notification and coordination. The Commission concludes that the timing of advance coordination should be left to the parties. To the extent that prior coordination has been occurring informally between applicants and Quiet Zone entities, it appears that applicants have successfully coordinated with Quiet Zone entities and subsequently filed applications without formal direction from or involvement of the Commission. Given this success, the Commission concludes that it is unnecessary to prescribe a specific timeline for advance notification and coordination. Applicants must continue to serve notice to the relevant Quiet Zone entity that the application has actually been filed and that such notification include technical details of the proposed operation as set out in §§ 1.924(a)(1) and 1.924(d). Continuing to require applicants to provide notice when an application is filed is reasonable to ensure consistency between technical specifications agreed upon pursuant to the advance coordination and what is actually filed in the application. Moreover, for situations in which an applicant has given advance notice but does not reach agreement with the Quiet Zone entity regarding proposed operations, such notice signals the Quiet Zone entity that the 20-day waiting/comment period has begun.

C. Conditional Operation of Stations

9. *Background.* Section 101.31(b) permits applicants for certain point-to-point microwave stations to operate on a conditional basis during the pendency of an associated application under certain conditions. 47 CFR 101.31(b)(v). However, subsection (v) of that rule forbids conditional operation of facilities located in areas identified in § 1.924 in general. *See* 47 CFR 101.31(b)(v). The Commission sought comment on whether to allow part 101 applicants to initiate conditional operation under § 101.31(b), notwithstanding the limitation contained in subsection (v), if they submit written consent from the applicable Quiet Zone entity, and otherwise are eligible to initiate conditional operations over the proposed facility.

10. *Discussion.* The Commission concludes that it is in the public interest to allow part 101 applicants to operate on a conditional basis in the Quiet Zones pending application processing if they obtain prior consent from the applicable Quiet Zone entity. Section 101.31(b)(1)(v)'s ban on conditional operation in Quiet Zones was established to ensure that such areas are adequately protected from interference. However, the underlying goal of the ban against conditional operation in Quiet Zones would be served where, prior to submitting an application, an applicant has resolved interference and other coordination issues with an affected entity and has obtained consent. The Commission has previously recognized that permitting conditional operation pending the approval of an application provides greater flexibility to part 101 entities and enables them to operate more efficiently. Reorganization and Revision of parts 1, 2, 21, and 94 of the Rules to Establish a New part 101 Governing Terrestrial Microwave Fixed Radio Services, *Report and Order,* 61 FR 26670, May 28, 1996. In instances where applicants have obtained consent from the relevant entities and have satisfied other applicable conditions, precluding such part 101 entities from operating on a conditional basis would unduly delay the construction and deployment of microwave networks. Accordingly, § 101.31(b)(1)(v) is modified to permit conditional operation in Quiet Zones if the applicant has obtained written consent from the applicable entity and otherwise satisfies the criteria for conditional authorization found in § 101.31(b).

11. Similarly, the Commission concludes that, for other wireless services in which applicants are permitted to operate on a conditional basis prior to authorization, there is little basis to distinguish applicants of such services from part 101 applicants so long as an applicant has coordinated with the applicable Quiet Zone entity and all other requirements for conditional operation have been met. However, the Commission will not extend this to wireless services, such as cellular, which do not permit operation prior to authorization by the Commission.

E. Rules Cross-Referencing § 1.924

12. *Background.* There are a number of Commission rules that cross-reference § 1.924 or specify procedures that are contingent upon § 1.924. In the *NPRM,* the Commission referenced §§ 90.655, 95.45(b), 101.1009, and 101.1329 as examples of rules that point out that certain sites may require individual station licenses or are the subject to other restrictions if they are located in Quiet Zones. The Commission requested comments on any possible modifications of these or other rules that implement the Commission's goals regarding protection of Quiet Zones from unacceptable interference.

13. *Discussion.* The Commission finds that augmenting its service-specific rules to ensure that applicants and licensees are aware of their § 1.924 obligations is not warranted. Applicants and licensees are required to be aware of and to comply with all applicable Commission rules. In the *ULS Report and Order,* the Commission consolidated all wireless procedural rules, including service-specific Quiet Zone rules, into part 1 in order to provide consistent standards for all wireless services, eliminate unnecessary or redundant rules, and retain service-specific rules only where such rules are necessary due to technical, operational or policy considerations of the particular wireless service. *See* Amendment of parts 0, 1, 12, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order,* 63 FR 68904, December 14, 1998 (*ULS Report and Order*). In consolidating all of the procedural rules in part 1, the Commission established a single point of reference regarding its wireless licensing procedures. The Commission finds the argument that applicants are unlikely to read applicable part 1 rules unpersuasive to undo the harmony and consistency achieved by the *ULS Report and Order.* Moreover, the Commission is not aware that there is a current problem with carriers not complying with § 1.924 requirements specifically because they are not aware of the obligation to do so. Therefore, the Commission will not

place additional references to § 1.924 in its service-specific rules.

F. Matters Raised by Commenters in Response to the NPRM

14. In the *NPRM*, the Commission requested comment on ways to improve the current procedures prescribed by § 1.924 that would streamline the applicable processes while continuing to ensure that areas are fully and adequately protected. In response, the Commission received a number of proposals to modify the processes set out in § 1.924.

1. Proposals To Institute 30-day Automatic Consent Period

15. *Background.* Two commenters advocate an advance 30-day notification period during which the failure of the Quiet Zone entity to comment or object will constitute approval of the terms of the proposed operation. One commenter suggests that the consent process regarding conditional authority for microwave services in Quiet Zones be combined with current frequency coordination procedures. Part 101 applicants are required to provide notification to other part 101 licensees and applicants of proposed frequency use prior to filing an application with the Commission. *See* 47 CFR 101.103(d). If no comment or objection is received within 30 days, the applicant is deemed to have made reasonable efforts to coordinate and may file its application without a response. *See* 47 CFR 101.103(d)(2)(iv). The commenter proposes that this rule be extended to Quiet Zone situations so that the Quiet Zone entity would be required to respond in writing to an applicant's proposed operation within the same 30-day period. In this proposal, an applicant can satisfy the consent requirement by providing a statement that the Quiet Zone entity has been notified and no responses were received within 30 days of notification.

16. Another commenter also proposes a 30-day notification period, but seeks to apply the 30-day notification period across services. The commenter proposes that, for situations in which notification is required prior to authorization, if a Quiet Zone entity does not respond to pre-application coordination efforts made by an applicant within 30 days of notification, then concurrence will be implied. No comment period would occur after filing. Further, the Commission would require that applicants file an application within 60 days of the end of the 30-day period to prevent the application from getting stale.

17. *Discussion.* The Commission declines to adopt the proposals advanced by commenters to establish a process in which consent by a Quiet Zone entity is assumed if no objections are raised by the end of a 30-day period. As emphasized in the *NPRM*, the Commission considers protection of the Quiet Zone areas from radio frequency interference to be critically important and that in instituting this proceeding, it did not intend to reduce or eliminate applicant requirements to coordinate with Quiet Zones. The Commission believes that the protections set out in § 1.924 will be undercut if carriers may assume that failure by a Quiet Zone entity to respond to a notification within 30 days may automatically be construed as consent. The Commission continues to believe that actual coordination between applicants and Quiet Zone entities remains the most effective means for parties to ensure that Quiet Zone areas are protected from interference in the least burdensome manner to applicants.

18. While commenters argue that allowing a 30-day automatic consent period is more desirable than the current coordination process, the Commission does not believe that a departure from its current coordination processes is warranted. The Commission cannot know what is occurring with respect to interactions between applicants and Quiet Zone entities, for example, whether notification was adequate or whether applicants are taking appropriate measures to avoid interference to Quiet Zone areas. Without explicit prior approval by the Quiet Zone entity or a time period during which a Quiet Zone entity may lodge objections to operational parameters set out in an application, the Commission cannot assume consent. Further, the record makes apparent that applicants and Quiet Zone entities have been largely successful in resolving notification and coordination issues under current rules. To the extent that there have been delays, the Commission is confident that the rule changes that the Commission is adopting in this proceeding will make the Quiet Zone application processes more efficient and will facilitate the rapid deployment of service.

2. Proposal Requesting Greater Commission Oversight of Guidelines and Processes Used by Quiet Zone Entities

19. *Background.* RCC Consultants (RCC) requests that the Commission set out specific Quiet Zone interference standards that must be followed by Quiet Zone entities, specifically NRAO and NRRO. RCC states that, although pre-coordination with Quiet Zone facilities has been helpful in the past, pre-coordination is a trial and error process that is unnecessary and burdensome for applicants. Instead, RCC argues that the interference protection criteria used by these facilities should be set out in the Commission's rules, and a clear process for appeals regarding interference objections raised by NRAO and NRRO should be established to determine the reasonableness of existing criteria and any future changes. RCC asserts that these facilities can and have changed their interference parameters at will with no opportunity for public comment or appeal, and that the present method of determining acceptable effective radiated power (ERP) with respect to the NRAO and NRRO facilities is subject to error.

20. *Discussion.* In the *Arecibo Report and Order*, 62 FR 55525, October 27, 1997, the Commission established coordination procedures that would apply to operations potentially affecting the Arecibo Radio Astronomy Observatory. In establishing these procedures, the Commission explained its rationale for not adopting specific interference criteria. The Commission concluded that the large number of services—each operating at differing power levels and frequencies—as well as other variables such as terrain and propagation characteristics made it prohibitively difficult and time-consuming to establish interference standards that would apply to all applicants. Amendment of the Commission's Rules to Establish a Radio Astronomy Coordination Zone in Puerto Rico, ET Docket No. 96–2, RM–8165, *Report and Order.* Given these considerations, the Commission did not establish interference limits, and instead directed Arecibo to establish technical guidelines to be used during coordination. Although that order was specific to the Arecibo facility, the same rationale holds true for NRAO and NRRO as well. The factors that caused the Commission to find in the *Arecibo Report and Order* that establishing specific interference criteria would be inordinately difficult and time-consuming remain valid.

21. Similarly, the Commission does not find that it is desirable for the Commission to mandate a method of performing interference studies. The Commission believes that specifying the precise method of conducting interference studies could actually run counter to the interests of applicants by taking flexibility out of the coordination

process. Instead, the Commission continues to believe that applicants and Quiet Zone entities should be given the flexibility to work out a solution as to how best to safeguard the affected entity's operations while minimizing burdens on the applicant.

22. The Commission also finds it unnecessary to establish a process for applicants to appeal interference objections raised by Quiet Zone entities. Although Quiet Zone entities are tasked with establishing technical guidelines regarding operations in Quiet Zone areas and are permitted to object to an applicant's proposed operations, the Commission remains the sole entity with authority to resolve service licensing issues. The Commission emphasizes that the interference guidelines set by Quiet Zone entities are starting points from which the applicant and the applicable entity can begin discussions. If an applicant believes that a Quiet Zone entity's guidelines are incorrect or overly stringent, it has the ability to raise the issue with the Commission for final resolution.

3. Proposal to Allow Applicants to Avoid Coordination Process if They Provide Self-certification Regarding Operational Parameters

23. *Background.* Spanish Broadcasting System (SBS) seeks specific interference criteria as part of a safe harbor approach by which applicants could self-certify that they are operating below established interference limits. SBS's proposal provides that no Quiet Zone coordination would be necessary for applicants that certify that their proposed facility produces a predicted field strength that is less than those established by the Commission. Further, SBS suggests that, in the event that the applicant's proposed operation produces a predicted field strength that exceeds the established limit, the applicant can still self-certify and avoid the coordination process if it submits a showing of terrain shadowing or other local propagation anomaly which results in a diminished field strength at the Quiet Zone location. Alternatively, SBS proposes that, if the Commission determines that there must be actual coordination between applicants and Quiet Zone entities, the Commission should find that no Quiet Zone consent is required where the applicant proposes a modified facility which is technically equivalent to an existing facility.

24. *Discussion.* The Commission finds that SBS's proposals to permit self-certification would increase the risk of harmful interference to Quiet Zone operations. Even if the Commission concludes that it is feasible and desirable for it to establish appropriate interference criteria, there is still a risk that applicants may make errors in calculation or that the established criteria is not appropriate for a given facility. The likelihood that interference may occur is further enhanced if the Commission was to adopt SBS's proposal to allow an applicant to avoid actual coordination even where its proposed operation produces a predicted field strength greater than the established limit. Under SBS's proposal, an applicant would be allowed to demonstrate that terrain shadowing results in a diminished field strength in a Quiet Zone area. Current terrain shadowing programs may be of use in calculating the reduction of interference to broadcast facilities, but are not designed to predict the impact on the extremely sensitive receivers used by radio astronomy observatories. Rather than streamlining the application process, it appears that this proposal would in actuality impose an extra level of complexity by requiring the Commission to determine whether or not such a showing is accurate and a proposed facility is indeed operating below interference limits.

25. SBS's proposal that coordination need not be required for modifications that are technically equivalent to current facilities is equally problematic. This proposal poses the problem of how to define technical equivalency. The Commission concludes that the technical difficulties that SBS's proposals create far outweigh any benefits that would be gained. While SBS argues that its proposals will streamline the application process, the Commission finds that implementation of its proposals would bring complexities to the process that would delay application processing or increase the risk of harmful interference in Quiet Zone areas. While the Commission has a general goal of streamlining its rules and processes, it will not do so if the potential for harmful interference to Quiet Zones is increased. Moreover, because it appears that, for the most part, applicants and Quiet Zone entities have been successful in timely resolving interference issues, the Commission finds little reason to allow applicants to bypass actual coordination with Quiet Zone entities.

4. Clarification of Coordination Obligations

26. *Background.* Certain wireless services require frequency coordination prior to the filing of an application. A few of the commenters request that for applications in these services, the Commission identify the entity that is responsible for Quiet Zone coordination, *i.e.*, the applicant or the applicant's frequency coordinator. The commenters state that, although they believe that frequency coordinators are better qualified to deal with coordination issues, they primarily wish to have certainty as to which entity is obligated.

27. *Discussion.* Because the Commission seeks to provide for flexibility in the coordination process, the Commission declines to specify an entity to perform the notifications required in § 1.924. The Commission clarifies that an applicant has the option of notifying/coordinating with a Quiet Zone entity itself or satisfying the requirement through the use of a frequency coordinator. In the event that a frequency coordinator is used and the Quiet Zone entity has interference concerns, the frequency coordinator may continue to act on behalf of the applicant in order to resolve interference issues. However, the applicant retains the ultimate responsibility of ensuring that coordination has occurred and that the concerns of the Quiet Zone entity are addressed.

F. Administrative Corrections

28. The *NPRM* provided that the Commission's rules would be amended to correct certain ministerial errors. First, the Commission reinstates a limitation on the Arecibo Observatory coordination obligations that was inadvertently omitted when the Commission consolidated many of its wireless rules into part 1 in the ULS proceeding. To correct this omission, the Commission adds a new § 1.924(d)(4) that states: "The provisions of this paragraph do not apply to operations that transmit on frequencies above 15 GHz." Similarly, the version of § 1.924(e) contained in the current volume of the Code of Federal Regulations includes two typographical errors from the rule adopted in 1997. Specifically, in § 1.924(e)(1), the first set of coordinates listed under Denver, CO Area, Rectangle 1 should be 41°30′ 00″ North Latitude instead of 1°31′00″ North. In § 1.924(e)(2), the longitude coordinates should read 76°52′00″ instead of 78°52′00″. Further, the Commission changes the Quiet Zones reference in §§ 27.601(c)(iii) and 90.159(b)(5) § 90.177 to § 1.924, to reflect the consolidation of wireless rules the Commission adopted in the ULS proceeding.

29. In addition to the errors identified in the *NPRM,* further review of the

Quiet Zones rules reveals that other corrections are necessary. First, some of the power flux density values identified in the table entitled "Field Strength Limits for Table Mountain" in § 1.924(b)(1) are not listed correctly. All power flux density limits specified in the table and its accompanying footnote should have negative values. For example, the power flux density value for signals in the 470 to 890 MHz range should read "−56.2" rather than the "56.2" currently listed in the table. Further, the coordinates in rule § 1.924(f)(1)(i) should be 41°45′00.2″ North, 70°30′58.3″ West, and coordinates in § 1.924(f)(4)(iii) should read 34°08′59.6″ North, 119°11′03.8″ West. Finally, § 1.924 currently lists both the former and current versions of § 1.924(g), and should be corrected to remove the former version. The Commission therefore revises § 1.924 to reflect these corrections.

III. Procedural Matters

A. Final Regulatory Flexibility Act

30. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM*. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

Need for, and Objectives of, the Report and Order

31. In the *Report and Order*, the Commission adopts changes to its rules governing Quiet Zone areas. The amendments serve the dual purposes of streamlining requirements for applications affecting Quiet Zones, while protecting these sensitive areas from harmful interference. While the Commission believes that the record in this proceeding demonstrates that its rules have been largely successful in protecting Quiet Zones while facilitating the deployment of wireless services, the Commission believes there are certain modifications that will expedite the application process, reduce unnecessary or redundant requirements from Commission regulations, and promote the efficient use of spectrum within these protected areas. Accordingly, in this *Report and Order*, the Commission: (1) Amends its rules to provide for immediate processing of applications that may implicate Quiet Zones, in the event that the applicant indicates that it has obtained the prior consent of the Quiet Zone entity; (2) amend its rules to clarify that applicants may provide notification to and begin coordination with Quiet Zone entities (where required) in advance of filing an application with the Commission; (3) amend § 101.31(b)(1)(v) to permit part 101 applicants as well as applicants for other services that allow operation prior to authorization, to initiate conditional operation, provided they have obtained the prior consent of the Quiet Zone entity and are otherwise eligible to initiate conditional operations over the proposed facility; (4) clarify that either the applicant or the applicant's frequency coordinator may notify and initiate coordination proceedings with the Quiet Zone entity.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

32. Only one commenter submitted comments in response to the IRFA. RCC argues that local governments and non-profit agencies that are located in the NRQZ pay more to install and operate radio communications systems. RCC asserts that more antenna sites are needed to provide satisfactory radio coverage due to the NRQZ restrictions, and in the worst case, public safety agencies are forced to accept diminished radio system performance due to impractical limits on ERP that are required by NRAO. In order to satisfy NRAO and NRRO guidelines, RCC states that licensees are forced to: (1) Reduce operating power; (2) use directional antennas; and, (3) place their transmitters in less than optimal locations. RCC argues that these steps generally result in diminished radio system performance in the area where coverage is required. RCC also argues that the Quiet Zone requirements are, in effect, a de facto unfunded federal mandate because local governments and small entities receive no reimbursement or federal funds to compensate them for the additional expense that they incur in the process of meeting the NRAO and NRRO criteria. RCC argues that the federal government should compensate local governments and radio communications systems operators for the costs associated with complying with Quiet Zones requirements.

33. RCC's IRFA comments appear to challenge the Commission's existing notification and coordination procedures regarding Quiet Zone areas rather than any issues or proposals raised in the *NPRM* or in the IRFA. In the Final Regulatory Flexibility Analysis in the *Arecibo Report and Order*, the Commission noted that, while some parties argued that the coordination requirements were an unnecessary burden that would delay the provision of service and increase the costs of operation, the Commission determined that complying with the coordination procedures would be a minimal burden, and that the public benefit in protecting the Arecibo Observatory's operations from harmful interference justifies the minimal burden that may be created. Although the proceeding related to the Arecibo Observatory, the same considerations are true for Quiet Zones in general. Further, the Commission believes that the rule changes adopted in this *Report and Order* will benefit all carriers, including small businesses, by expediting the application process, reducing unnecessary or redundant requirements from Commission regulations, and promoting the efficient use of spectrum within Quiet Zone areas.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

34. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by proposed rules. *See* 5 U.S.C. 604(a)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." *See* 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. *See* 5 U.S.C. 601(3). A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). *See* 15 U.S.C. 632.

35. In the following paragraphs, the Commission further describes and estimates the number of small entity licensees that may be affected by the rules adopted in the *Report and Order*. Since this rulemaking proceeding applies to multiple services, the Commission will analyze the number of small entities affected on a service-by-service basis.

36. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category "Cellular and Other Wireless Telecommunications." Under that SBA category, a business is small if it has 1,500 or fewer employees. According to the Bureau of the Census, only twelve firms out of a total of 1,238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular

carriers are small businesses under the SBA's definition.

37. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. According to the Census Bureau data for 1997, only twelve firms out of a total of 1,238 such firms that operated for the entire year, had 1,000 or more employees. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business standard.

38. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order,* the Commission adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order,* 62 FR 15978, April 3, 1997. This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in Three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses. A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.

39. *Lower 700 MHz Band Licenses.* The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses. Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.

40. *Upper 700 MHz Band Licenses.* The Commission released a *Report and Order,* authorizing service in the upper 700 MHz band. Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to part 27 of the Commission's Rules, WT Docket No. 99–168, *Report and Order,* 65 FR 3139, January 20, 2000. In that proceeding, the Commission defined a small business as any entity with average annual gross revenues for the three preceding years not in excess of $40 million, and a very small business as an entity with average annual gross revenues for the three preceding years not in excess of $15 million. The auction for Upper 700 MHz licenses, previously scheduled for January 13, 2003, was postponed.

41. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order,* 65 FR 17599, April 4, 2000, the Commission adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. Service Rules for the 746–764 MHz Bands, and Revisions to part 27 of the Commission's Rules, WT Docket No. 99–168, *Second Report and Order.* A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.

42. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

43. *Paging.* In the *Paging Second Report and Order,* 62 FR 11616, March 12, 1997, the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of Metropolitan Economic

Area (MEA) and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. 132 companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. Currently, there are approximately 24,000 Private Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 608 private and common carriers reported that they were engaged in the provision of either paging or "other mobile" services. Of these, the Commission estimates that 589 are small, under the SBA-approved small business size standard. The Commission estimated that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

44. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. *See* 47 CFR 24.720(b). For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

45. *Narrowband PCS.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*, 65 FR 35843, June 6, 2000. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

46. *Rural Radiotelephone Service.* The Commission uses the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

47. *Air-Ground Radiotelephone Service.* The Commission uses the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

48. *Specialized Mobile Radio (SMR).* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards "very small entity" bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed "small business" status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

49. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is established by the SBA.

50. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave

frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The SBA has approved of this standard: The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA's or the Commission's rules.

51. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million or more but less than $25 million.

52. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities. There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, the Commission tentatively concludes that at least 1,932 ITFS licensees are small businesses.

53. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, the Commission could use the definition for "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. Moreover, because PLMR licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities, the Commission is not certain that the Cellular and Other Wireless Telecommunications category is appropriate for determining how many PLMR licensees are small entities for this analysis. Rather, it may be more appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

54. The Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994, there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

55. *Amateur Radio Service.* All Amateur Radio Service licenses are presumed to be individuals. Accordingly, no small business definition applies for this service.

56. *Aviation and Marine Radio Service.* Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter. The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules for radiotelephone wireless communications.

57. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of its evaluations and conclusions in this IRFA, the Commission estimates that there may be at least 712,000 potential licensees that are individuals or small entities, as that term is defined by the SBA.

58. *Fixed Microwave Services.* Fixed microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. Currently, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, the Commission will use the SBA's definition applicable to "Cellular and Other Wireless Telecommunications" companies "that is, an entity with no more than 1,500 persons. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed licensees and 61,670 or fewer small private operational-fixed licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

59. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph four of this IRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.

60. *Personal Radio Services.* Personal radio services provide short-range, low-power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS). Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business

definition applies for these services. The Commission is unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition.

61. *Offshore Radiotelephone Service.* This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission uses the SBA definition applicable to cellular and other wireless telecommunication companies, i.e., an entity employing no more than 1,500 persons. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition. The Commission assumes, for purposes of this FRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

62. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The FCC auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

63. *Local Multipoint Distribution Service.* An auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small business winning bidders that won 119 licenses.

64. *Incumbent 24 GHz Licensees.* The rules that the Commission adopts could affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission did not develop a definition of small entities applicable to existing licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the SBA rules for "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any entity employing no more than 1,500 persons. The 1992 Census of Transportation, Communications and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone (now Wireless) firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. This information notwithstanding, the Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is the Commission's understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

65. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million. "Very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these definitions. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

66. *39 GHz Service.* The Commission defines "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these definitions. The auction of the 2,173 39 GHz licenses began on April 12, 2000, and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

67. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs). Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, 64 FR 59656, November 3, 1999, the Commission defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years. Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, *Report and Order and Memorandum Opinion and Order.* A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years. The SBA has approved of these definitions. At this time, the Commission cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under the Commission's rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, the Commission assumes for purposes of this FRFA that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

68. *Location and Monitoring Service (LMS).* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined

"small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million. A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million. These definitions have been approved by the SBA. An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. The Commission cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions.

69. *Multiple Address Systems (MAS).* Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines "small entity" for MAS licenses as an entity that has average gross revenues of less than $15 million in the three previous calendar years. "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years. The SBA has approved of these definitions. The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001. Seven winning bidders claimed status as small or very small businesses and won 611 licenses.

With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, the Commission notes that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definitions developed by the SBA would be more appropriate. The applicable definition of small entity in this instance appears to be the "Cellular and Other Wireless Telecommunications" definition under the SBA rules. This definition provides that a small entity is any entity employing no more than 1,500 persons. The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

70. In the *Report and Order*, the Commission concluded that advance coordination between applicants and Quiet Zone entities would streamline the processing of applications by allowing the Commission to begin processing prior to the end of the 20-day waiting period set out in § 1.924 of the Commission's rules.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

71. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small Entities. *See* 5 U.S.C. 603(c).

In the *Report and Order*, the Commission adopts changes to its rules governing Quiet Zone areas that will streamline requirements for applications affecting Quiet Zones, while protecting these sensitive areas from harmful interference. In the *Report and Order*, the Commission: (1) Provides for immediate processing of applications that may implicate Quiet Zones, in the event that the applicant indicates that it has obtained the prior consent of the Quiet Zone entity; (2) clarifies that applicants may provide notification to and begin coordination with Quiet Zone entities (where required) in advance of filing an application with the Commission; (3) amends § 101.31(b)(1)(v) to permit applicants of part 101 and other services that permit operation prior to authorization to initiate conditional operation, provided they have obtained the prior consent of the Quiet Zone entity and are otherwise eligible to initiate conditional operations over the proposed facility; and (4) clarifies that either the applicant or the applicant's frequency coordinator may notify and initiate coordination proceedings with the Quiet Zone entity.

72. While the Commission does not implement alternatives specific to small entities, the purpose behind the rule modifications in the *Report and Order* is to expedite the application process, reduce unnecessary or redundant requirements from Commission regulations, and promote the efficient use of spectrum within Quiet Zones by all carriers, including small businesses.

73. *Report to Congress:* The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the *Congressional Review Act. See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

B. Paperwork Reduction Act Analysis

74. The actions taken in the *Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the PRA, and will go into effect upon announcement in the **Federal Register** of OMB approval.

IV. Ordering Clauses

75. Pursuant to the authority contained in §§ 1, 4(i), 303(c), 303(f), 303(g), 303(r), 309(j), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(c), 303(f), 303(g), 303(r), 309(j), and 332, this *Report and Order* is adopted, and parts 1, 27, 74, 90, and 101 of the Commission's rules, 47 CFR parts 1, 27, 74, 90, and 101, are amended to establish policies and procedures directed at streamlining the filing of applications in Quiet Zone areas. The rules will become effective June 7, 2004, except for §§ 1.924(a)(2) and 1.924(d)(2), which contain information collection requirements that are not effective until approved by the Office of Management

and Budget (OMB). The agency will publish a document in the **Federal Register** announcing the effective date of the rules that require information collection.

76. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Radio, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 27

Communications common carriers, Radio.

47 CFR Part 74

Radio, Reporting and recordkeeping requirements.

47 CFR Part 90

Communications equipment, Reporting and recordkeeping equipment.

47 CFR Part 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons set forth in the preamble, amend parts 1, 27, 74, 90 and 101 of title 47 of the Code of Federal Regulations as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

■ 2. Section 1.924 is amended by revising Quiet zones, the introductory paragraph, paragraphs (a)(2), (b)(1) table, (b)(3), (d)(2), the Denver, CO, and Washington, DC, entries following (e)(1) introductory text, (e)(2), (f)(1)(i), (f)(4)(iii) and (g) and by adding paragraph (d)(4) to read as follows:

§ 1.924 Notifications concerning interference to quiet zones, radio astronomy, research and receiving installations.

Areas implicated by this paragraph are those in which it is necessary to restrict radiation so as to minimize possible impact on the operations of radio astronomy or other facilities that are highly sensitive to interference. Consent throughout this paragraph means written consent from the quiet zone, radio astronomy, research, and receiving installation entity. The areas involved and procedures required are as follows:

(a) * * *

(2) When an application for authority to operate a station is filed with the FCC, the notification required in paragraph (a)(1) of this section may be made prior to, or simultaneously with the application. The application must state the date that notification in accordance with paragraph (a)(1) of this section was made. After receipt of such applications, the FCC will allow a period of 20 days for comments or objections in response to the notifications indicated. If an applicant submits written consent from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the FCC will process the application without awaiting the conclusion of the 20-day period. For services that do not require individual station authorization, entities that have obtained written consent from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory may begin to operate new or modified facilities prior to the end of the 20-day period. In instances in which notification has been made to the National Radio Astronomy Observatory prior to application filing, the applicant must also provide notice to the quiet zone entity upon actual filing of the application with the FCC. Such notice will be made simultaneous with the filing of the application and shall comply with the requirements of paragraph (a)(1) of this section.

* * * * *

(b) * * *

(1) * * *

FIELD STRENGTH LIMITS FOR TABLE MOUNTAIN [1]

Frequency range	Field strength (mV/m)	Power flux density (dBW/m^2)
Below 540 kHz	10	−65.8
540 to 1600 kHz	20	−59.8
1.6 to 470 MHz	10	−65.8
470 to 890 MHz	30	−56.2
890 MHz and above	1	−85.8

[1] **Note:** Equivalent values of power flux density are calculated assuming free space characteristic impedance of 376.7Ω (120πΩ).

* * * * *

(3) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, NOAA R/OM62, 325 Broadway, Boulder, CO 80305; telephone 303–497–6548, in advance of filing their applications with the Commission.

* * * * *

(d) * * *

(2) In services in which individual station licenses are issued by the FCC, the notification required in paragraph (d) of this section may be made prior to, or simultaneously with, the filing of the application with the FCC, and at least 20 days in advance of the applicant's planned operation. The application must state the date that notification in accordance with paragraph (d) of this section was made. In services in which individual station licenses are not issued by the FCC, the notification required in paragraph (d) of this section should be sent at least 45 days in advance of the applicant's planned operation. In the latter services, the Interference Office must inform the FCC of a notification by an applicant within 20 days if the Office plans to file comments or objections to the notification. After the FCC receives an application from a service applicant or is informed by the Interference Office of a notification from a service applicant, the FCC will allow the Interference Office a period of 20 days for comments or objections in response to the

application or notification. If an applicant submits written consent from the Interference Office, the FCC will process the application without awaiting the conclusion of the 20-day period. For services that do not require individual station authorization, entities that have obtained written consent from the Interference Office may begin to operate new or modified facilities prior to the end of the 20-day period. In instances in which notification has been made to the Interference Office prior to application filing, the applicant must also provide notice to the Interference Office upon actual filing of the application with the FCC. Such notice will be made simultaneous with the filing of the application and shall comply with the requirements of paragraph (d) of this section.

* * * * *

(4) The provisions of paragraph (d) of this section do not apply to operations that transmit on frequencies above 15 GHz.

(e) * * *

(1) * * *

Denver, CO Area

Rectangle 1:

41°30′ 00″ N. Lat. on the north
103° 10′ 00″ W. Long. on the east
38° 30′ 00″ N. Lat. on the south
106° 30′ 00″ W. Long. on the west

Rectangle 2:

38° 30′ 00″ N. Lat. on the north
105° 00′ 00″ W. Long. on the east
37° 30′ 00″ N. Lat. on the south
105° 50′ 00″ W. Long. on the west

Rectangle 3:

40° 08′ 00″ N. Lat. on the north
107° 00′ 00″ W. Long. on the east
39° 56′ 00″ N. Lat. on the south
07° 15′ 00″ W. Long. on the west

Washington, DC Area

Rectangle

38°40′00″ N. Lat. on the north
78°50′00″ W. Long. on the east
38°10′00″ N. Lat. on the south
79°20′00″ W. Long. on the west; or

(2) Within a radius of 178 km of 38°48′00″ N. Lat./76°52′00″ W. Long.

* * * * *

(f) * * *

(1) * * *

(i) 41°45′ 00.2″ N, 70°30′ 58.3″ W.,

* * * * *

(4) * * *

(iii) 34°08′59.6″ N, 119°11′03.8″ W;

* * * * *

(g) *GOES.* The requirements of this paragraph are intended to minimize harmful interference to Geostationary Operational Environmental Satellite earth stations receiving in the band 1670–1675 MHz, which are located at Wallops Island, Virginia; Fairbanks, Alaska; and Greenbelt, Maryland. (1) Applicants and licensees planning to construct and operate a new or modified station within the area bounded by a circle with a radius of 100 kilometers (62.1 miles) that is centered on 37E56′47″ N, 75E27′37″ W (Wallops Island) or 64E58′36″ N, 147E31′03″ W (Fairbanks) or within the area bounded by a circle with a radius of 65 kilometers (40.4 miles) that is centered on 39E00′02″ N, 76E50′31″ W (Greenbelt) must notify the National Oceanic and Atmospheric Administration (NOAA) of the proposed operation. For this purpose, NOAA maintains the GOES coordination web page at *http://www.osd.noaa.gov/radio/frequency.htm,* which provides the technical parameters of the earth stations and the point-of-contact for the notification. The notification shall include the following information: requested frequency, geographical coordinates of the antenna location, antenna height above mean sea level, antenna directivity, emission type, equivalent isotropically radiated power, antenna make and model, and transmitter make and model.

(2) *Protection.* (i) Wallops Island and Fairbanks. Licensees are required to protect the Wallops Island and Fairbanks sites at all times.

(ii) *Greenbelt.* Licensees are required to protect the Greenbelt site only when it is active. Licensees should coordinate appropriate procedures directly with NOAA for receiving notification of times when this site is active.

(3) When an application for authority to operate a station is filed with the FCC, the notification required in paragraph (f)(1) of this section should be sent at the same time. The application must state the date that notification in accordance with paragraph (f)(1) of this section was made. After receipt of such an application, the FCC will allow a period of 20 days for comments or objections in response to the notification.

(4) If an objection is received during the 20-day period from NOAA, the FCC will, after consideration of the record, take whatever action is deemed appropriate.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 3. The authority citation for part 27 continues to read:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

■ 4. Section 27.601 is amended by revising paragraph (c)(1)(iii) to read as follows:

§ 27.601 Guard Band Manager authority and coordination requirements.

* * * * *

(c) * * *

(1) * * *

(iii) Would affect areas described in § 1.924 of this chapter.

* * * * *

■ 5. Section 27.803 is amended by revising paragraph (b)(3) to read as follows:

§ 27.803 Coordination requirements.

* * * * *

(b) * * *

(3) That operates in areas listed in part 1, § 1.924 of this chapter; or

* * * * *

■ 5. Section 27.903 is amended by revising paragraph (b)(3) to read as follows:

§ 27.903 Coordination requirements.

* * * * *

(b) * * *

(3) That operates in areas listed under part 1, § 1.924 of this chapter.

* * * * *

■ 6. Section 27.1003 is amended by revising paragraph (b)(3) to read as follows:

§ 27.1003 Coordination requirements.

* * * * *

(b) * * *

(3) That operates in areas listed in part 1, § 1.924 of this chapter;

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 7. The authority citation for part 74 continues to read:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 8. Section 74.25 is amended by revising paragraph (a)(5) to read as follows:

§ 74.25 Temporary conditional operating authority.

* * * * *

(a) * * *

(5) The station site does not lie within an area identified in § 1.924 of this chapter.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 9. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 10. Section 90.159 is amended by revising paragraph (b)(5) to read as follows:

§ 90.159 Temporary and conditional permits.

* * * * *

(b) * * *

* * * * *

(5) The applicant has determined that the proposed station affords the level of protection to radio quiet zones and radio receiving facilities as specified in § 1.924 of this chapter.

* * * * *

■ 11. Section 90.1207 is amended by revising paragraph (b)(1)(iii) to read as follows:

§ 90.1207 Licensing.

* * * * *

(b) * * *

(1) * * *

(iii) The station would affect areas identified in § 1.924 of this chapter.

* * * * *

PART 101—FIXED MICROWAVE SERVICES

■ 12. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 13. Section 101.31 is amended by revising paragraph (b)(1)(v) to read as follows:

§ 101.31 Temporary and conditional authorizations.

* * * * *

(b) * * *

(1) * * *

(v) The station site does not lie within 56.3 kilometers of any international border, within areas identified in §§ 1.924(a) through (d) of this chapter unless the affected entity consents in writing to conditional operation or, if operated on frequencies in the 17.8–19.7 GHz band, within any of the areas identified in § 1.924 of this chapter;

* * * * *

■ 14. Section 101.525 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 101.525 24 GHz system operations.

* * * * *

(a) * * *

(1) * * *

(iii) The station would affect areas identified in § 1.924 of this chapter.

* * * * *

■ 15. Section 101.1009 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 101.1009 System operations.

* * * * *

(a) * * *

(1) * * *

(iii) The station would affect areas identified in § 1.924 of this chapter.

* * * * *

■ 16. Section 101.1329 is amended by revising paragraph (c) to read as follows:

§ 101.1329 EA Station license, location, modifications.

* * * * *

(c) The station would affect areas identified in § 1.924 of this chapter.

[FR Doc. 04–7799 Filed 4–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 99–87; FCC 03–306]

Suspension of Effective Date in 47 CFR 90.209(b)(6)

AGENCY: Federal Communications Commission.

ACTION: Final rule; suspension of effectiveness.

SUMMARY: In this document, the Commission grants four petitions for stay of the *Second Report and Order*, released on February 25, 2003, in this proceeding. Specifically, the FCC stays the effectiveness of 47 CFR 90.209(b)(6), which provides that no new applications for the 150–174 MHz and/or 421–512 MHz bands will be acceptable for filing if the applicant utilizes channels with a bandwidth exceeding 11.25 kHz beginning January 13, 2004, and no modification applications for stations in the 150–174 MHz and/or 421–512 MHz bands that increase the station's authorized interference contour will be acceptable for filing if the applicant utilizes channels with a bandwidth exceeding 11.25 kHz, beginning January 13, 2004. Consequently, the FCC will continue to accept and process such applications.

DATES: Effective April 6, 2004, 47 CFR 90.209(b)(6) is stayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the date on which the stay expires.

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

SUPPLEMENTARY INFORMATION: This is a summary of the *Order*, released on December 3, 2003. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. The full text may also be downloaded at: *http://www.fcc.gov/Wireless/Orders/2003/fcc03306.txt*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

In the *Order*, the Commission stayed the effectiveness of 47 CFR 90.209(b)(6), which provides that no new applications for the 150–174 MHz and/or 421–512 MHz bands will be acceptable for filing if the applicant utilizes channels with a bandwidth exceeding 11.25 kHz beginning January 13, 2004, and no modification applications for stations in the 150–174 MHz and/or 421–512 MHz bands that increase the station's authorized interference contour will be acceptable for filing if the applicant utilizes channels with a bandwidth exceeding 11.25 kHz, beginning January 13, 2004. The stay will remain in effect until resolution of the petitions for reconsideration of the *Second Report and Order*, 68 FR 42296, July 17, 2003, released on February 25, 2003, in this proceeding.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–7366 Filed 4–5–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 541, 542 and 543

[Docket No. NHTSA–2002–12231]

RIN 2127–A146

Federal Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The final rule extends NHTSA's anti-theft parts marking requirement to two different groups of vehicles. First, the Anti Car Theft Act of 1992 required the Attorney General to make a finding that NHTSA "shall apply" the parts marking requirements to below median theft rate passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less, unless the Attorney General found that the extension would not substantially inhibit chop shop operations and motor vehicle thefts. The Attorney General did not make that finding about the extension. Accordingly, the Attorney General found that the standard should be extended. Since the Attorney General found that the standard should be extended, NHTSA is required by the Act to issue this final rule extending the parts marking requirement to all below median theft rate passenger cars and multipurpose passenger vehicles (MPVs) that have a gross vehicle weight rating of 6,000 pounds or less, but have not been exempted under 49 CFR Part 543 on the grounds that they are equipped with an effective anti-theft device as standard equipment.

Second, to increase the effectiveness of the first extension, this final rule also extends the parts marking requirement to below median theft rate light duty trucks with major parts that are interchangeable with a majority of the covered major parts of the below median theft rate multipurpose passenger vehicles and other passenger motor vehicles made subject to the requirement by the first extension. If this additional extension were not made, it would reduce the ability of investigators to treat the absence of intact markings on these multipurpose passenger vehicles and other passenger vehicles as a "red flag" indicating a need for further investigation.

DATES: This final rule is effective September 1, 2006. Voluntary compliance is permitted before that time. If you wish to submit a petition for reconsideration of this rule, your petition must be received by June 7, 2004.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Privacy Act: Anyone is able to search the electronic form of all petitions received into any of our dockets by the name of the individual submitting the petition (or signing the petition, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues, you may contact Deborah Mazyck, Office of Planning and Consumer Standards, (Telephone: 202–366–0846) (Fax: 202–493–2290).

For legal issues, you may contact George Feygin, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background and Summary

A. 1984 Motor Vehicle Theft Law Enforcement Act

In 1984, Congress enacted the Motor Vehicle Theft Law Enforcement Act (the 1984 Theft Act), directing NHTSA to issue a theft prevention standard requiring vehicle manufacturers to mark the major parts [1] of "high-theft" [2] lines of passenger motor vehicles (parts marking).[3] "Passenger motor vehicle" was defined in the 1984 Theft Act so as to exclude multipurpose passenger cars, leaving passenger cars as the only included type of vehicle. Pursuant to that mandate, NHTSA issued a standard requiring the marking of the major parts of passenger cars as well as the marking of replacement parts for those major parts. The standard, found at 49 CFR Part 541, became effective on April 24, 1986.[4]

The parts marking requirement has remained largely unchanged over the years. Manufacturers can meet the parts marking requirement with indelibly marked labels that cannot be removed without becoming torn or rendering the number on the label illegible. If removed, the label must leave a residue on the part so that investigators will have evidence that a label was originally present. Alteration of the number on the label must leave traces of the original number or otherwise visibly alter the appearance of the label material. A replacement major part must be marked with the registered trademark of the manufacturer of the replacement part, or some other unique identifier, and the letter "R".

As explained in a July 1998 agency report to Congress updating the findings of a 1991 agency report to Congress and evaluating the effects of the 1984 and 1992 Acts,[5] NHTSA stated that parts marking deters motor vehicle theft and aids theft investigators by (1) allowing investigators to trace a stolen car more easily to its owner, prove it was stolen, and make an arrest; (2) allowing investigators in most jurisdictions to treat the absence of intact markings as

[1] Currently, the list of major parts includes: engine, transmission, hood, fenders, side and rear doors (including sliding and cargo doors and decklids, tailgates, or hatchbacks, whichever is present), bumpers, quarter panels, and pickup boxes and/or cargo boxes. *See* 49 CFR 541.5.

[2] Under the 1984 Theft Act, a "high theft" vehicle had or was likely to have had a theft rate greater than the median theft rate for all new vehicles for calendar years 1983 and 1984. Vehicles with theft rates higher (or lower) than the median theft rate are sometimes referred to in this document as "higher (or lower) than median theft rate."

[3] *See* Pub. L. 98–547.

[4] *See* 50 FR 43166 (October 24, 1985).

[5] *See* July 1998 Report to Congress (Docket No. NHTSA–2002–12231–6).

a "red flag" indicating a need for further investigation; and (3) in those jurisdictions requiring inspections of restored cars before they can be retitled, assisting officers in identifying vehicles that have been reassembled using stolen parts. Additionally, the agency noted that parts marking provides a useful tool in prosecuting chop shop owners and dealers of stolen vehicles and parts. Facilitating the prosecution of thieves, operators of chop shops, and dealers in stolen parts is a significant deterrent to motor vehicle theft and the operation of chop shops.

The 1984 Theft Act authorized exemptions from the parts marking requirement for vehicle lines in which antitheft devices were installed as standard equipment. Manufacturers were allowed to obtain two new exemptions per model year through the 1996 model year. Beginning with the 1997 model year, manufacturers were allowed to obtain one new exemption per model year. The manufacturer must petition NHTSA to obtain an exemption. The agency grants the exemption if it determines that the devices are likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements.[6]

B. Anti Car Theft Act of 1992

As a result of a 1991 agency report to Congress and other information, Congress enacted the Anti Car Theft Act of 1992 (the 1992 Theft Act).[7] The 1992 Theft Act expanded the application of the parts marking requirement by expanding the definition of "passenger motor vehicle" to include multipurpose passenger vehicles (MPVs) (*i.e.*, passenger vans and sport utility vehicles) and light duty trucks (LDTs) (*i.e.*, pickup trucks and cargo vans) with a gross vehicle weight rating (GVWR) of 6,000 pounds or less.[8] This definitional change brought above median theft rate MPVs and LDTs with a GVWR of 6,000 pounds or less within the parts marking requirement. Additionally, the 1992 Theft Act also expanded the group of vehicles considered to be "high theft" [9] to include passenger motor vehicle lines that had or were likely to have theft rates below the median theft rate, but had major parts that were interchangeable with major parts of above median theft rate vehicles.[10] Finally, the 1992 Theft Act mandated that NHTSA apply the parts marking requirement to not more than 50% of the below median theft rate passenger vehicles (other than LDTs) that were not otherwise subject to that requirement.[11] NHTSA implemented these amendments in a final rule that was published on December 13, 1994, and became effective on October 25, 1995.

In addition to making immediate changes in the application of the parts marking requirement, the 1992 Theft Act also required the Attorney General to conduct two separate reviews relating to parts marking and issue separate findings based on each review.

First, the 1992 Theft Act required the Attorney General to conduct an initial review of effectiveness and make a finding requiring that the Secretary of Transportation expand the parts marking requirement to all remaining lines of passenger motor vehicles (except LTDs), unless the Attorney General found instead that extending the requirement would not substantially inhibit chop shop operations and motor vehicle theft.[12] In effect, Congress created a rebuttable presumption, *i.e.*, parts marking should be expanded unless the Attorney General was able to make a finding against the effectiveness of parts marking. As will be discussed in greater detail below, the Attorney General did not make such a finding. [13] Accordingly, the Attorney General concluded that the parts marking requirement should be expanded. As a result of this finding, and in accordance with the 1992 Theft Act, we issue this final rule.

Second, the 1992 Theft Act requires the Attorney General to conduct a long-range review of parts marking effectiveness.[14] The Attorney General must make separate findings whether (a) parts marking has been effective in substantially inhibiting chop shop operations and motor vehicle theft,[15] and (b) whether the anti-theft devices for which the agency has granted exemptions are an effective substitute for parts marking in inhibiting motor vehicle theft.[16] If the Attorney General finds that the application of the parts marking requirement has not been effective, the agency must terminate the parts marking requirement. Only if the Attorney General finds that the anti-theft devices are an effective substitute can the agency continue to issue exemptions.

C. Attorney General's Initial Report (2000)

On July 21, 2000, the Attorney General transmitted to the Secretary of Transportation a report containing the results of the initial review. In the report, the Attorney General noted that Under the Act, the Secretary is required to apply the theft standard to the remaining motor vehicle lines:

> unless the Attorney General finds * * * that applying the [vehicle theft prevention standard] to the remaining lines of passenger motor vehicles (except light duty trucks) not covered by that standard would not substantially inhibit chop shop operations and motor vehicle thefts.

The Attorney General did not make such a finding. Accordingly, the Attorney General concluded that the parts marking requirement should be expanded as required by the 1992 Act, because she could not find that requiring motor vehicle manufacturers to mark major parts in all motor vehicle lines would not substantially inhibit chop shop operations and motor vehicle thefts:

> I have determined that the available evidence warrants application of the vehicle theft prevention standard to the remaining motor vehicle lines. That is, the evidence does not support a finding that requiring motor vehicle manufacturers to mark major parts in all motor vehicle lines will not substantially inhibit chop shop operations and motor vehicle thefts.

Accordingly, the Attorney General instead concluded that the parts marking requirement should be expanded as required by the 1992 Act. Thus, in accordance with requirements of 1992 Theft Act, NHTSA was required to conduct a rulemaking proceeding extending the parts marking requirement.

D. Notice of Proposed Rulemaking (2002)

Pursuant to the Initial Report, on June 26, 2002, NHTSA published a Notice of Proposed Rulemaking (NPRM) to extend the parts marking requirement to all passenger cars and MPVs with a GVWR of 6,000 pounds or less (67 FR 43075) [Docket No. NHTSA–2002–12231]. NHTSA also proposed to extend the requirement to LTDs with major parts that are interchangeable with a majority of the covered major parts of MPVs. In addition, NHTSA requested comments on (1) more permanent methods of parts marking and (2) marking air bags and window glazing.

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[6] *See* 49 CFR Part 543.

[7] *See* Pub. L. 102–519. October 25, 1992, codified in 49 U.S.C. Chapter 331. *Theft Prevention*.

[8] *See* 49 U.S.C. 33101(10).

[9] Under the 1992 Theft Act, a "high theft" vehicle has or is likely to have a theft rate greater than the median theft rate for all new vehicles in the 2-year period covering calendar years 1990 and 1991. *See* 49 U.S.C. 33104(a)(1).

[10] *See* 49 U.S.C. 33104(a)(1)(C).

[11] *See* 49 U.S.C. 33103(a).

[12] *See* 49 U.S.C. 33103(c).

[13] Attorney General's Initial Review of Effectiveness is entitled "The Initial Report." *See* Docket No. NHTSA–2002–12231–5.

[14] *See* 49 U.S.C. 33103(d)(1).

[15] *See* 49 U.S.C. 33103(d)(1)(A).

[16] *See* 49 U.S.C. 33103(d)(1)(B).

NHTSA received 17 comments on the NPRM from automobile manufacturers and their trade associations, a trade association for automobile dealers, the insurance industry, law enforcement agencies, automobile parts manufacturers and special interest groups. Some comments supported the agency's proposal to expand the parts marking requirement, while other opposed it. In preparing its responses to the various comments questioning the Attorney General's Initial Report and finding, NHTSA informally consulted with officials at the U.S. Department of Justice, advising them of those comments and providing them with a draft of this notice.

After reviewing the comments, and in accordance with requirements of the 1992 Theft Act, NHTSA is extending the parts marking requirement to all lower than median theft rate passenger cars and multipurpose passenger vehicles with a GVWR of 6,000 pounds or less. The agency is also extending the requirement to light duty trucks with major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicles. At this time, NHTSA is not planning to propose requiring a more permanent method of parts marking. It is also not planning to seek authority to add air bags and glazing to the list of parts that must be marked.

II. Final Rule

A. Extension of Parts Marking

1. Below Median Theft Rate Theft Passenger Cars and Multipurpose Passenger Vehicles

A number of commenters from the automobile industry, including manufacturers and trade associations, collaterally challenged the Attorney General's initial report to DOT, arguing that the parts marking requirement should not be extended because the report does not conclusively prove the effectiveness of parts marking or that the basis for the report is inadequate. Specifically, Association of International Automobile Manufacturers (AIAM) commented that the Attorney General's finding does not conclusively demonstrate that expansion of parts marking requirements will be effective in reducing motor vehicle theft and chop shop operations.[17] In contrast, special interest and law enforcement groups supported parts marking as an effective deterrent to chop shop operations.

The automobile industry criticisms of the Attorney General's finding appear to be based on an incorrect understanding of the 1992 Theft Act. The 1992 Theft Act did not premise the extension of the parts marking requirement upon the Attorney General's issuance of a report proving the effectiveness of parts marking. Instead, Congress mandated that NHTSA extend parts marking *unless* the Attorney General found that parts marking is not effective. While the mandate renders the criticisms of the Attorney General's initial report essentially inapposite for the purposes of this final rule, we note that the Attorney General's report did, in fact, reflect consideration of all of the factors (*e.g.*, additional costs, effectiveness, competition, and available alternative factors) specified by the 1992 Theft Act. *See* 49 U.S.C. 33103(c). The details of the criticisms of the report are discussed below.

In its comments, Volkswagen (VW) alleged that the Attorney General's finding was "based to a great extent on anecdotal input from a few law enforcement organizations." This is an inaccurate characterization of the basis for the Attorney General's finding. In preparing the July 2000 initial report, the Attorney General relied on a cross-sectional time series analysis of auto theft data, and a law enforcement personnel survey, both prepared by Abt Associates. The Abt Associates report, along with information generated from public comments on the effectiveness of parts marking, resulted in determination that parts marking is a cost effective method of reducing auto theft. As to the law enforcement survey, the Attorney General found that it "supports the expansion of parts marking."

All but one of the 47 investigators surveyed by Abt Associates believed that auto parts marking should be extended to all automobile lines and to all types of noncommercial vehicles, especially to pickup trucks. The majority of the investigators surveyed indicated that marking vehicle parts aids in identifying and arresting those involved in trafficking in stolen vehicles and stolen parts. Specifically, 75 percent of the auto theft investigators from big cities surveyed felt that parts marking is useful or very useful in arresting chop shop owners and operators and those who deal in stolen vehicles.

Investigators identified four ways in which the marking of auto parts provides assistance.

The agency believes that the data sufficiently support the conclusion that the "evidence does not support a finding that requiring motor vehicle manufacturers to mark major parts in all motor vehicle lines will not substantially inhibit chop shop operations and motor vehicle thefts." Abt Associates utilized all available information to prepare the DOJ report on the effectiveness of expanding the auto parts marking.

In its first comment, DaimlerChrysler suggested that the Attorney General's findings did not adequately consider the statutory factors in 49 U.S.C. 33103 (c). In response to this comment, we note that the Attorney General considered the factors of cost, effectiveness, competition, and available alternative factors, as required by 49 U.S.C. 33103 (c). Specifically, Attorney General noted that NHTSA had found that estimated costs of parts marking is substantially less than the statutory limit of $24.86 (in 2000 dollars) per vehicle and that the cost for even small manufacturers was less than the statutory limit. With respect to effectiveness, the Attorney General noted that the theft "investigators identified the lack of permanence as the most significant obstacle to increasing the effective use of markings' and urged "DOT to require permanent, non-removable markings." After evaluating the effect on competition, the Attorney General found that extending the parts marking requirement would not harm competition. In evaluating available alternative factors, the Attorney General considered the availability of alternative methods of reducing theft. She concluded that anti-theft devices best serve their purpose when they are used in conjunction with parts marking, and not as a substitute for parts marking.

On February 13, 2003, DaimlerChrysler (DC) submitted additional comments.[18] In those comments, DC suggested that NHTSA refrain from issuing a final rule because it believed that NHTSA had not yet received from DOJ "all the information supporting" Attorney General's finding on parts marking effectiveness, as required by 49 U.S.C. 33103(c). The Attorney General's Report included a summary of a comment from Volvo Cars of North America (Volvo). DC states that it was unable to obtain a copy of the Volvo comment from DOJ and that the document did not appear to exist.

We have received the full record from the Attorney General, including the letter submitted by Volvo. The letter submitted by Volvo was placed in the

[17] *See* Docket No. NHTSA–2002–12231–13. See also National Automobile Dealer's Association (NADA) comment. NADA commented that the Attorney General's finding has not proven parts marking to be effective, but also conceded that the standard's questionable effectiveness might partially be due to its underutilization by the insurance industry and by law enforcement. (Docket No. NHTSA–2002–12231–17).

[18] Docket No. NHTSA–2002–12231–30.

docket on November 6, 2003.[19] In its comments about the Volvo submission to the Attorney General, DaimlerChrysler stated that the Attorney General's report is inconclusive because Volvo has commented "insurance data supports no marking for low theft cars with anti-theft devices." We note that Volvo did not present any insurance data that would indicate that parts marking would not substantially inhibit chop shop operations. Instead, Volvo simply presented evidence showing that certain vehicles equipped with anti-theft devices have lower-than average theft rate. These data do not in any way support a finding that expanded parts marking would not substantially inhibit chop shop operations.

DaimlerChrysler and the Alliance of Automobile Manufacturers suggested that they were denied a complete, meaningful opportunity to comment on NHTSA's proposal because the public comments submitted in response to the Department of Justice's September 11, 1998 request for comments (63 FR 48758) in connection with its initial review were not available in NHTSA's docket during the comment period. We disagree. As noted above, the statutory mandate to extend the parts marking requirement based on the Attorney General's findings renders the criticisms of the Attorney General's initial report essentially inapposite for the purposes of this final rule. Likewise, the mandate renders the record on which the Attorney General based her report inapposite for the purposes of this final rule. The 1992 Act does not contemplate that this agency should base its decision in this rulemaking on the record compiled by the Attorney General.

Ford asserted that the Attorney General did not separately consider the effectiveness of passive anti-theft systems.[20] As previously discussed, the Attorney General considered anti-theft systems as an alternative to parts marking and concluded that anti-theft devices should be used in conjunction with parts marking, as opposed to as a replacement of parts marking. We note that 49 U.S.C. 33103 (c) did not require that the Attorney General to find a single most effective anti-theft device. Instead, the inquiry was limited to whether available information indicated that expanded parts marking requirement would not substantially inhibit chop shop operations. The fact that a passive anti-theft device could also act to inhibit chop-shop operations does not release NHTSA from a legal obligation to extend the parts marking requirement based on Attorney General's findings.

As stated above, the 1992 Theft Act requires NHTSA to extend the parts marking requirements, unless the Attorney General finds in his Initial Report on parts marking effectiveness that such a requirement would not substantially inhibit chop shop operations and motor vehicle thefts. Since the Attorney General did not make that finding, NHTSA must complete a rulemaking to extend the standard. In its comment, Advocates for Highway and Auto Safety emphasized this point by stating that: "the Secretary of Transportation, and by delegation NHTSA, has no legal option other than to expand parts marking requirement * * * " and "In light of the Attorney General's conclusion that vehicle parts marking is an effective deterrent to auto theft, the agency is statutorily required to extend the scope of the Theft Prevention Standard * * *."[21]

2. Below Median Theft Rate Light Duty Truck Lines Having Major Parts Interchangeable With Below Median Theft Rate Passenger Cars and Multipurpose Passenger Vehicles

The 1992 Theft Act mandated the extension of the parts marking requirement to above median theft rate MPVs and LDTs, to below median theft rate MPVs and LDTs that have major parts that are interchangeable with the major parts of above median theft rate vehicles, and to the below median theft rate MPVs covered by this final rule. However, the Act did not mandate the extension of the requirement to other below median theft rate LDTs.

Extension of parts marking to below median theft rate MPVs, but not to below median theft rate LDTs, would have created a situation in which the major parts of below median theft rate MPVs would be marked, while below median theft rate LDTs that share major parts with these same MPVs would not be subject to parts marking requirements. Failure to apply the parts marking requirement to these below median theft rate LDTs would create a supply of legally unmarked parts interchangeable with the marked parts of the below median theft rate MPVs. This could confuse law enforcement personnel and hinder effective prosecution of chop shop operators. This is because it would have been difficult or even impossible to draw, with any confidence, inferences from the absence of a mark on a major part on a below median theft rate MPV. Such a part might have been one that originally been required to be marked, but had its marking removed because the part came from a stolen vehicle. But such a part also might have come from a below median theft rate vehicle whose parts were not required to be marked. In order to remedy this potential problem, we proposed that below median theft rate LDTs that have major parts interchangeable with below median theft rate MPVs would be subject to parts marking requirements.

We received a single comment on this proposal. In its comments, NADA questioned NHTSA's statutory authority for adopting this proposal. Nevertheless, NADA did not oppose the concept.

As noted above, below median theft rate LDTs were not included in the mandate for extension of the parts marking requirement.[22] Because below median theft rate LDTs not otherwise subject to parts marking requirement may have major parts that are interchangeable with MPVs that are subject to parts marking requirement, we find it necessary to use our implied discretionary authority to require that both types of vehicles with interchangeable parts be parts marked. Congress addressed the issue of whether to make a general extension of parts marking to all remaining vehicles. It decided to mandate extending parts marking generally to remaining cars and MPVs, but not to mandate its extension generally to remaining LDTs. However, it did not address the narrower and more focused issue of whether supplementary action involving some of the remaining LDTs was necessary to make that extension to remaining cars and MPVs effective. Congress has already made the judgment that coverage of vehicles with interchangeable parts is necessary and appropriate to making parts marking effective for vehicles with theft rates above the median. We believe that a similar judgment is warranted here.

Under 49 U.S.C. 33104(2), below median theft rate passenger motor vehicles (including MPVs and LDTs) cannot be subjected to parts marking based on interchangeability of parts if the below median theft rate vehicles account for more than 90 percent of total annual production of all lines of vehicles that may contain these interchangeable parts. This statutory exclusion applies to below median theft rate vehicles if they account for more than 90 percent of total annual production of all lines of vehicles

[19] Docket No. NHTSA–2002–12231–33.

[20] Docket No. NHTSA–2002–12231–21.

[21] *See* Docket No. NHTSA–2002–12231–23; see also comments by VW, acknowledging that NHTSA is obligated to expand parts marking based on Attorney General's finding (NHTSA–2002–12231–20).

[22] *See* 49 U.S.C. 33103(b)(1).

containing interchangeable parts. For example, if a given below median theft rate LDT line would become subject to parts marking pursuant to this final rule because it shares major parts with an MPV line that is also subject to parts marking requirement, the LDT line would nevertheless be excluded if it accounted for more than 90 of total production of both lines.

NHTSA has also decided to extend parts marking to those below median theft rate LDTs that have major parts interchangeable with passenger cars. We believe that extending this requirement to passenger cars is consistent with the intent of both the 1992 Theft Act and the NPRM. NHTSA does not anticipate any additional burdens on the manufacturers as a result of this additional extension because we are unaware of any LDTs that have parts that are interchangeable with passenger motor vehicles other than MPVs. However, in the future, a manufacturer could produce an LDT with major parts interchangeable with a passenger motor vehicle other than an MPV. This additional requirement anticipates this possibility. As previously discussed, an LDT line that accounts for more than 90 percent of the total production of all lines containing parts interchangeable with the parts of that line would be excluded from this requirement.

As of the effective date of this final rule, manufacturers will have to report to NHTSA new and existing LTD lines with a majority of major parts interchangeable with passenger cars and MPVs pursuant to 49 CFR 542.2.

B. Continued Availability of Exemptions for Vehicles With Antitheft Devices

Section 33106 of 49 U.S.C., Chapter 331, provides that vehicle manufacturers of a high-theft vehicle lines may petition NHTSA for an exemption from the parts-marking requirements, including this parts marking expansion pursuant to the Attorney General's initial report, based on availability of an anti-theft device. NHTSA may exempt a high theft vehicle line from the parts marking requirement if the manufacturer installs an antitheft device as standard equipment on the entire vehicle line for which it seeks an exemption, and NHTSA determines that the antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the part-marking requirements.

Manufacturers were permitted to receive up to two new exemptions per model year for model years 1988–1996. For model years 1997–2000, manufacturers were permitted only one new exemption per model year. After model year 2000, the number of new exemptions is contingent on a finding by the Attorney General, which will be part of a long-range review of effectiveness, to be conducted after this final rule is published. As discussed in the NPRM, after consulting with DOJ, the agency decided it could continue granting one exemption per model year pending the results of the long-term review.

This final rule will not affect the granting of anti-theft device exemptions. Commenters indicated support for these exemptions. The Alliance of Automobile Manufacturers (Alliance) noted that, as currently drafted, Part 543 applies only to high-theft vehicles and , suggested that NHTSA revise this language to allow exemptions for all vehicles subject to the parts marking requirement. The agency agrees with this suggestion and is making that change in this final rule. However, the agency emphasizes that manufacturers are still limited to one new exemption per model year.

C. Exclusion of Small Volume Manufacturers

Currently, there are approximately four vehicle manufacturers that qualify as small businesses under the Small Business Administration's regulations. Because of their small sales volumes, these manufacturers' vehicles have not been subject to the theft prevention standard.[23] Extending the theft prevention standard to all passenger cars and MPVs would require these manufacturers to comply with the standard for the first time. In the NPRM, the agency noted that fixed costs associated with parts marking would be spread over a smaller number of vehicles for these manufacturers, resulting in higher per vehicle costs. The agency estimated that these fixed costs would cause the per vehicle costs to exceed the statutory limit for manufacturers making fewer than 373 vehicles each year for sale in the United States. Therefore, the agency proposed to exclude those manufacturers who make fewer than 500 vehicles for sale in the United States each year from the parts marking requirement.

The Alliance, AIAM, Ferrari and Lamborghini commented on the number of vehicles that defined a small volume manufacturer. Each of the commenters urged the agency to change the definition of a small volume manufacturer from those who make fewer than 500 vehicles for sale in the United States each year to those who make fewer than 5,000 vehicles for sale in the United States each year. Lamborghini and the Alliance pointed out that the definition should be the same for all safety standards, as it is for the Environmental Protection Agency and California Air Resources Board emissions regulations. AIAM noted that due to the limited market for their replacement parts, these vehicles are unlikely targets of thieves who would sell parts off of the vehicle. Commenters were also divided on whether or not small volume manufacturers could comply with the parts marking requirement within the statutory cost limit.

Further analysis of data with respect to theft rates of vehicles produced by small volume manufacturers indicates that a very limited number of these vehicles are stolen. Model Year 2001 Preliminary Theft Data showed only two vehicles produced by manufacturers that produce fewer than 5,000 vehicles were stolen in calendar year 2001. We note that stolen parts from low production vehicles may be a less marketable commodity to chop shop operators, because owners buy exclusively from authorized service facilities. Additionally, NHTSA has taken into account the definition of "small volume manufacturer" in the vehicle standards and believes that the definition of "small volume manufacturers" here should, in the interest of consistency, be expanded to include those manufacturers who make fewer than 5,000 vehicles for sale in the U.S. each year. Therefore, those manufacturers who make fewer than 5,000 vehicles for sale in the U.S. each year will be excluded from the expansion of the theft prevention standard.

D. Other Issues

1. More Permanent Methods of Parts Marking

In the NPRM, NHTSA stated that the agency is considering proposing performance requirements that would necessitate the use of more permanent methods of parts marking. The NPRM included several questions similar to the questions that the agency asked when it published the preliminary version of its 1998 Report to Congress.

Most commenters strongly recommend identifying and evaluating the costs associated with more permanent methods before a final rule is issued. The comments support performance requirements that would necessitate the use of more permanent parts marking methods. Subsequent to the comment-closing period, the agency received information from four

[23] 13 CFR 121.201.

companies relative to more permanent marking methods.

DataDot Technology presented information on vehicle identification in the form of microdots that could be sprayed on specific parts of the motor vehicle, each of which incorporate the Vehicle Identification Number (VIN). Retainagroup provided the agency with information on laser etching of motor vehicle parts that could be done at the manufacturing plant. Avery Dennison provided information on several types of etching for window glazing (compound liquid etch, direct laser etch and sand blast), labels (pressure sensitive adhesive, heat applied (laser), radio frequency identification tags using microtechnology chips, cloth and thermal transmitted) that are currently available. In 1997, 3M presented information on labels that leave the VIN covertly in the paint of a vehicle, which is detected by using an ultraviolet light. However, the agency received very limited cost information on these newest technologies.

After reviewing the information presented by these companies, NHTSA has decided not to propose requiring more permanent methods of parts marking at this time. The agency believes that more specific cost information is needed in order to consider the possibility of initiating a new proposal for performance requirements and test procedures. Accordingly, NHTSA will continue to monitor future developments of any new permanent parts marking methods and associated costs. NHTSA expects that these new technologies will become more affordable as they advance, increasing the likelihood of staying within the statutory limit.

2. Marking of Air Bags and Window Glazing

Currently, air bags and window glazing are not classified as major parts subject to the parts marking requirement. In the NPRM, the agency requested comments on the potential costs and benefits of marking air bags and window glazing and whether the agency should seek the statutory authority to extend parts marking to these parts.

A number of commenters supported expanding the list of vehicle parts to be marked under the parts marking standard to include air bag modules and major pieces of window glazing. The motor vehicle manufacturers and their trade associations did not support marking of air bags or window glazing. Comments reflected a definite split of opinion between the motor vehicle groups and law enforcement.

Air bag theft is a widespread problem. The National Insurance Crime Bureau, an organization who partners with insurers and law enforcement agencies to detect, prevent and deter fraud and theft, reports that approximately 50,000 air bags are stolen each year, resulting in an annual loss of more than $50 million to vehicle owners and their insurers. Air bags have quickly become a primary accessory on the black market for stolen vehicle parts. A new air bag, which retails for approximately $1,000 from a car dealer, costs $50 to $200 on the black market. Vehicle manufacturers provided information on various safety risks foreseeable during labeling or inscribing the VIN on the air bags on the production line (*i.e.*, an air bag's suddenly deploying, endangering unsuspecting workers). However, some manufacturers indicate that they are voluntarily cross-referencing the air bag serial number with the VIN, and that this information would be available to law enforcement.

Based on the information provided on window glazing, NHTSA is not convinced that window glazing theft is a widespread problem. While an argument could be made that the marking of more parts would increase the difficulty of running a profitable "chop shop," in the past there have been concerns that adding glazing to the list of major parts would push the cost of each vehicle over the statutory cost limit.

After reviewing these comments, NHTSA does not believe that there is a compelling reason at this time to seek the statutory authority necessary to extend the parts marking requirement to air bags and window glazing.

3. Gross Vehicle Weight Rating

While the NPRM did not request comments from the public on changing the GVWR limit of 6,000 pounds, the Metro Transit Police and the International Association of Auto Theft Investigators (IAATI) urged NHTSA to expand parts marking of passenger vehicles, MPVs and light duty trucks to all vehicles with a GVWR of 10,000 lbs or less. Metro Transit Police and IAATI commented that by limiting the GVWR to 6,000 pounds or less, the most expensive MPV, trucks and vans that are targeted by thieves would be excluded from component parts marking.

The statute authorizing parts marking defines "passenger motor vehicle" as having an upper GVWR limit of 6,000 pounds (49 U.S.C. 33101). Therefore, NHTSA does not have the authority to apply this standard to vehicles with a GVWR greater than 6,000 pounds.

4. National Stolen Passenger Motor Vehicle Information System

Although the NPRM did not address the National Stolen Passenger Motor Vehicle Information System (NSPMVIS) or its effects on expanding parts marking, the agency received comments on this issue. The NSPMVIS will contain the vehicle identification numbers of stolen passenger motor vehicles and stolen passenger motor vehicle parts. Additionally, the system will be able to verify the theft status of salvage and junk motor vehicles and covered major parts.

The Automotive Recyclers Association (ARA) believes that NHTSA's proposed rule extending parts marking requirements to all passenger cars and MPVs would have a destructive effect on the entire automotive recycling industry. This stems from the direct consequences it has on the recently proposed DOJ rule to implement the NSPMVIS. ARA states that under NHTSA's proposed rule to extend parts marking to virtually all passenger cars and MPVs, the entire vehicle population will fall under the requirements of the NSPMVIS rule. ARA believes that the burden and cost of compliance to legitimate small, professional auto recyclers would be enormous.

Congress mandated NSPMVIS and this extension with the intention that each should be carried out concurrently. NHTSA does not have the authority to provide exemptions from the NSPMVIS, but will initiate discussion with DOJ to explore options to minimize unnecessary burdens.

III. Appendix C to Part 541

In reviewing the Theft Prevention Standard for this final rule, the agency noticed that Appendix C refers to 1983/84 median theft rates. Since the agency now uses the 1990/1991 median theft rate to determine whether a vehicle is high theft, this Appendix is amended to reflect this.

IV. Cost

In the "Final Regulatory Evaluation (FRE), Expansion of Auto Parts Marking Requirement Part 541," February 2004, the agency estimates the value of thefts that could potentially be reduced by the final rule is $38.8 million ($2.756 billion * 0.22 * 0.064).[24] It is estimated that an additional 3.25 million vehicles per year will have to be marked by this final rule. The estimated cost is $6.03

[24] 0.22 is the percentage of vehicle thefts that are represented by vehicles not being marked currently, but will be marked pursuant to this final rule. 0.064 is the agency's estimate of the potential effectiveness of the proposal in terms of the reduction in economic loss for unrecovered thefts.

per vehicle. Thus, the total annual cost is $19.6 million (in 2000 dollars). There is an additional cost of $0.50 or less per replacement part. The number of replacement parts sold per year for 3.25 million vehicles is not known. These costs are consistent with the cost estimates in the NPRM. For a detailed discussion of costs associated with this rulemaking, please see the Final Regulatory Evaluation (FRE) in the docket for this rulemaking.

Only commenter, DaimlerChrysler, commented that NHTSA had underestimated the actual costs incurred by manufacturers. DaimlerChrysler provided confidential cost estimates indicating that Mercedes-Benz USA, which currently does not have to mark any vehicles, would incur costs greater than the $24.86 limit per vehicle. The agency analyzed these cost estimates, which assumed that fixed costs such as purchasing printers would be paid off in the first year of use. If these fixed costs were amortized over a 3-year period, the typical assumption used by NHTSA in its cost estimates, the costs would be below the $24.86 limit. DaimlerChrysler's ongoing cost estimates were much lower after the first model year.

V. Effective Date

The agency proposed September 1, 2005 as the effective date for the new rule. AIAM and the Alliance, manufacturer trade associations, both commented that this would be sufficient leadtime to implement the new requirements, provided that the agency did not adopt a requirement for more permanent methods of parts marking.

IAATI and the Metro Transit Police commented that many manufacturers are beginning to introduce new model year vehicles prior to September of the previous year. Therefore, they urged NHTSA to change the effective date so that parts marking would be required for all 2006 model year vehicles.

IAATI and Metro Transit Police are correct in saying that manufacturers have begun introducing new model year vehicles earlier. However, NHTSA is concerned that if their suggestion were adopted, manufacturers who choose to change their model year designations early would be penalized because they would be required to comply with these new requirements with less leadtime. NHTSA agrees that it would be preferable for all vehicles for a certain model year to have parts marking. Therefore, we are allowing manufacturers to comply with the new requirements early if they wish to introduce a new model year prior to the effective date and wish to have all vehicles marked the same.

However, given the time that has elapsed since the publication of the NPRM, NHTSA is changing the effective date to September 1, 2006. We anticipate that many manufacturers will be able to comply prior to that date voluntarily. However, for manufacturers that must comply with the parts marking requirements for the first time, this two-year plus leadtime should allow sufficient time to acquire any necessary equipment and otherwise prepare for the effective date.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not "significant" under them. In the FRE, Expansion of Auto Parts Marking Requirement Part 541, June 2003, the agency estimated the value of thefts that could potentially be reduced by the final rule is $38.8 million.

It is estimated that an additional 3.25 million vehicles per year will have to be marked. The estimated cost is $6.03 per vehicle. Thus, the total annual cost is $19.6 million (in 2000 dollars). There is an additional cost of $0.50 or less per replacement part. The number of replacement parts sold per year for 3.25 million vehicles is not known.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. A Regulatory Flexibility Analysis (RFA) describing the impact of proposed rules on small entities is included in the FRE for this final rule. Based on this analysis, NHTSA has excluded manufacturers of less than 5,000 vehicles annually for sale in the United States from this final rule.

C. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

NHTSA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132 and have determined that it does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The final rule will not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires 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 of State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11=1.09). The assessment may be included in conjunction with other assessments, as it is here.

This final rule will not result in expenditures by State, local or tribal governments or automobile or automobile parts manufacturers of more than $109 million annually.

F. Civil Justice Reform

This final rule does not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This final rule will not preempt the states from adopting laws or regulations on the same subject, except that it will preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

G. Paperwork Reduction Act

The Department of Transportation has not submitted an information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub.L. 104–13, 44 U.S.C. Chapter 35). This rule does not impose any new information collection requirements on manufacturers.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 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.

We are unaware of any voluntary consensus standards for theft parts marking.

List of Subjects

49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

49 CFR Part 542

Administrative practice and procedure, National Highway Traffic Safety Administration, Reporting requirements.

49 CFR Part 543

Administrative practice and procedure, National Highway Traffic Safety Administration, Reporting requirements.

■ In consideration of the foregoing, NHTSA is amending 49 CFR Chapter V as follows:

PART 541—FEDERAL MOTOR VEHICLE THEFT PREVENTION STANDARD

■ 1. The authority citation for Part 541 continues to read as follows:

Authority: 49 U.S.C. 322, 33101, 33102, 33103, 33105; delegation of authority at 49 CFR 1.50.

■ 2. Section 541.3 is revised to read as follows:

§ 541.3 Application.

This standard applies to the following:

(a) Passenger motor vehicle parts identified in § 541.5(a) that are present:

(1) In passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less; and

(2) In light duty trucks that NHTSA has finally determined pursuant to 49 CFR part 542, to be high theft based on the 1990/91 median theft rate and listed in appendix A of this part.

(3) In light duty trucks that NHTSA has finally determined pursuant to 49 CFR part 542, to have a majority of major parts interchangeable with those of a passenger motor vehicle identified in paragraphs (a)(1) and (2) of this section and listed in appendix B of this part.

(b) Replacement parts for passenger motor vehicles described in paragraphs (a)(1) and (2) of this section, if the part is identified in § 541.5(a).

(c) This standard does not apply to passenger motor vehicle parts that are present in passenger cars, multipurpose passenger vehicles, and light duty trucks manufactured by a motor vehicle manufacturer that manufactures fewer than 5,000 vehicles for sale in the United States each year.

■ 3. Section 541.5 is amended by revising the first sentence of paragraph (e)(2) as follows:

§ 541.5 Requirements for passenger motor vehicles.

* * * * *

(e) * * *

(2) Each manufacturer subject to paragraph (e)(1) of this section shall, not later than 30 days before the line is introduced into commerce, inform NHTSA in writing of the target areas designated for each line subject to this standard. * * *

* * * * *

■ 4. Appendix A to Part 541 is revised to read as follows:

Appendix A to Part 541—Light Duty Truck Lines Subject to the Requirements of This Standard

Manufacturer	Subject lines
General Motors	Chevrolet S–10 Pickup. GMC Sonoma Pickup.

■ 5. Appendix A–I to Part 541 is amended by revising the title to read as follows:

Appendix A–I to Part 541—Lines with Antitheft Devices Which are Exempted From the Parts-Marking Requirements of This Standard Pursuant to 49 CFR Part 543

■ 6. Appendix A–II to Part 541 is amended by revising the title to read as follows:

Appendix A–II to Part 541—Lines with Antitheft Devices which are Exempted in-Part from the Parts-Marking Requirements of this Standard Pursuant to 49 CFR Part 543

■ 7. Appendix B to Part 541 is revised to read as follows:

Appendix B to Part 541—Light Duty Truck Lines With Theft Rates below the 1990/91 Median Theft Rate, Subject to the Requirements of This Standard

Manufacturer	Subject lines
None	

■ 8. Appendix C to Part 541 is amended by revising the title and the Application and Methodology sections to read as follows:

Appendix C to Part 541—Criteria for Selecting Light Duty Truck Lines Likely To Have High Theft Rates

* * * * *

Application

These criteria apply to lines of passenger motor vehicles initially introduced into commerce on or after September 1, 2005.

Methodology

These criteria will be applied to each line initially introduced into commerce on or after September 1, 2005. The likely theft rate for such lines will be determined in relation to the national median theft rate for 1990 and 1991. If the line is determined to be likely to have a theft rate above the national median, the Administrator will select such line for coverage under this theft prevention standard.

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PART 542—PROCEDURES FOR SELECTING LINES TO BE COVERED BY THE THEFT PREVENTION STANDARD

■ 9. The authority citation for Part 542 continues to read as follows:

Authority: 15 U.S.C. 2021, 2022, and 2023; delegation of authority at 49 CFR 1.50.

■ 10. The title of Part 542 is revised to read as follows:

PART 542—PROCEDURES FOR SELECTING LIGHT DUTY TRUCK LINES TO BE COVERED BY THE THEFT PREVENTION STANDARD

■ 11. Section 542.1 is revised to read as follows:

§ 542.1 Procedures for selecting new light duty truck lines that are likely to have high or low theft rates.

(a) Scope. This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in

the determination of whether any new light duty truck line is likely to have a theft rate above or below the 1990/91 median theft rate.

(b) Application. These procedures apply to each manufacturer that plans to introduce a new light duty truck line into commerce in the United States on or after September 1, 2005, and to each of those new lines.

(c) Procedures. (1) Each manufacturer shall use the criteria in Appendix C of part 541 of this chapter to evaluate each new light duty truck line and to conclude whether the new line is likely to have a theft rate above or below the 1990/91 median theft rate.

(2) For each new light duty truck line, the manufacturer shall submit its evaluations and conclusions made under paragraph (c) of this section, together with the underlying factual information, to NHTSA not less than 15 months before the date of introduction. The manufacturer may request a meeting with the agency during this period to further explain the bases for its evaluations and conclusions.

(3) Within 90 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, the agency independently evaluates the new light duty truck line using the criteria in Appendix C of part 541 of this chapter and, on a preliminary basis, determines whether the new line should or should not be subject to § 541.2 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and determinations, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(3) of this section. The manufacturer shall submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3) of this section. The request shall include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30-day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary determinations under paragraph (c)(3) of this section shall become final 45 days after the agency sends the letter specified in paragraph (c)(3) of this section unless a request for reconsideration has been received in accordance with paragraph (c)(4) of this section. If such a request has been received, the agency makes its final determinations within 60 days of its receipt of the request. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

■ 12. Section 542.2 is revised to read as follows:

§ 542.2 Procedures for selecting low theft light duty truck lines with a majority of major parts interchangeable with those of a passenger motor vehicle line.

(a) Scope. This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in the determination of whether any light duty truck lines that have or are likely to have a low theft rate have major parts interchangeable with a majority of the covered major parts of a passenger motor vehicle line.

(b) Application. These procedures apply to:

(1) Each manufacturer that produces—

(i) At least one passenger motor vehicle line identified in 49 CFR 541.3(a)(1) and (2) that has been or will be introduced into commerce in the United States, and

(ii) At least one light duty truck line that has been or will be introduced into commerce in the United States and that the manufacturer identifies as likely to have a theft rate below the median theft rate; and

(2) Each of those likely sub-median theft rate light duty truck lines.

(c) Procedures. (1) For each light duty truck line that a manufacturer identifies under appendix C of part 541 of this chapter as having or likely to have a theft rate below the median rate, the manufacturer identifies how many and which of the major parts of that line will be interchangeable with the covered major parts of any of its passenger motor vehicle lines.

(2) If the manufacturer concludes that a light duty truck line that has or is likely to have a theft rate below the median theft rate has major parts that are interchangeable with a majority of the covered major parts of a passenger motor vehicle line, the manufacturer determines whether all the vehicles of those lines with sub-median or likely sub-median theft rates will account for more than 90 percent of the total annual production of all of the manufacturer's lines with those interchangeable parts.

(3) The manufacturer submits its evaluations and conclusions made under paragraphs (c)(1) and (2) of this section, together with the underlying factual information, to NHTSA not less than 15 months before the date of introduction. During this period, the manufacturer may request a meeting with the agency to further explain the bases for its evaluations and conclusions.

(4) Within 90 days after its receipt of the manufacturer's submission under paragraph (c)(3) of this section, NHTSA considers that submission, if any, and independently makes, on a preliminary basis, the determinations of those light duty truck lines with sub-median or likely sub-median theft rates which should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's preliminary determinations, together with the factual information considered by the agency in making them.

(5) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(4) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(4) of this section informing it of the agency's evaluations and preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30-day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(6) Each of the agency's preliminary determinations made under paragraph (c)(4) of this section becomes final 45 days after the agency sends the letter specified in that paragraph unless a request for reconsideration has been received in accordance with paragraph (c)(5) of this section. If such a request has been received, the agency makes its final determinations within 60 days of its receipt of the request. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

PART 543—EXEMPTION FROM VEHICLE THEFT PREVENTION STANDARD

■ 13. The authority citation for Part 543 continues to read as follows:

Authority: 15 U.S.C. 2025; delegation of authority at 49 CFR 1.50.

■ 14. Section 543.3 is revised to read as follows:

§ 543.3 Application.

This part applies to manufacturers of passenger motor vehicles, and to any interested person who seeks to have NHTSA terminate an exemption.

■ 15. Section 543.5(a) is revised to read as follows:

§ 543.5 Petition: General requirements.

(a) For each model year through model year 1996, a manufacturer may petition NHTSA to grant exemptions for up to two additional lines of its passenger motor vehicles from the requirements of part 541 of this chapter. For each model year after model year 1996, a manufacturer may petition NHTSA to grant an exemption for one additional line of its passenger motor vehicles from the requirements of part 541 of this chapter.

* * * * *

Issued on March 29, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–7492 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1572

[Docket No. TSA–2003–14610; Amendment No. 1572–3]

RIN 1652–AA17

Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License; Final Rule

AGENCY: Transportation Security Administration (TSA), Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Transportation Security Administration (TSA) is issuing this final rule, which amends its Interim Final Rule (IFR) establishing security threat assessment standards for commercial drivers authorized to transport hazardous materials. TSA is changing the date on which fingerprint-based background checks must begin in all States to January 31, 2005. TSA is making this change so that the States will have enough time to make changes to their existing commercial driver safety and testing programs to facilitate implementation.

DATES: Effective April 6, 2004.

FOR FURTHER INFORMATION CONTACT: For technical questions: John Berry, Credentialing Program Office, Transportation Security Administration Headquarters, East Building, Floor 8, 601 12th Street, telephone: (571) 227–1757, e-mail: *John.Berry1@dhs.gov.* Steve Sprague, Maritime and Land, Transportation Security Administration Headquarters, West Building, Floor 9, 701 12th Street, Arlington, VA, telephone: (571) 227–1468, e-mail *Steve.Sprague@dhs.gov.*

For legal questions: Christine Beyer, Office of Chief Counsel, Transportation Security Administration Headquarters, West Building, Floor 8, TSA–2, 601 South 12th Street, Arlington, VA 22202–4220; telephone: (571) 227–2657; e-mail: *Christine.Beyer@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments: TSA is not requesting comments to this final rule.

Availability of Rulemaking Document

You can get an electronic copy of this final rule using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*; or

(3) Visiting TSA's Laws and Regulations web page at *http://www.tsa.gov/laws_regs/gov_index.shtm.*

In addition, copies are available by writing or calling the individuals in the **FOR FURTHER INFORMATION CONTACT** section. Please be sure to identify the docket number when making requests.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information or advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section for information or advice. You can get further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html.*

Background

On May 5, 2003, TSA published an interim final rule (IFR) that requires a security threat assessment of commercial drivers who are authorized to transport hazardous materials.[1] The IFR implements several statutory mandates, discussed below, including a check of relevant criminal and international databases, and appeal and waiver procedures. In the IFR, TSA also stated that it would provide guidance on how fingerprints would be collected and adjudicated.

TSA requested and received comments from the States, labor organizations, and trucking industry associations. In addition, TSA held working group sessions with the States to discuss potential fingerprinting systems that would achieve the statutory requirements, but would not adversely impact the States.

Based on the comments received and the working sessions with the States, on November 7, 2003, TSA amended the IFR to delay the date on which fingerprint collection would begin.[2] The amended IFR provided that the States must begin to collect fingerprints and the accompanying identification information as of April 1, 2004. Any State unable to meet this deadline was required to submit a fingerprint collection plan to TSA and request an extension of time (waiver) to submit the biographical information. The amended IFR required all States to be in compliance with the rule by December 1, 2004.

As a result of comments and correspondence received since November 2003, TSA has determined to eliminate the April 1, 2004 deadline. At present, more than thirty-five States have requested an extension of time to establish a fingerprint collection program. In addition, several States, in their requests for an extension of time, expressed concern over their ability to meet the December 1, 2004 deadline for all States to be in compliance with the rule. For this reason, discussed in greater detail below, fingerprinting will begin no later than January 31, 2005.

Under legislation passed in late 2003,[3] DHS must charge a fee for the cost of any credential and background check provided through the Department for workers in the field of transportation. DHS, through TSA, is in the process of preparing rulemaking documents to establish reasonable fees for this and other similar credentialing programs. With the proposed deadline extension, TSA will work to coordinate the timing of fee assessments with the fingerprint-based portion of the background records check.

USA PATRIOT Act

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act was enacted on October 25, 2001.[4] Section 1012 of the USA PATRIOT Act amended 49 U.S.C. Chapter 51 by

[1] 68 FR 23852, May 5, 2003.

[2] 68 FR 63033, November 7, 2003.

[3] Pub. L. 108–90, October 1, 2003, 117 Stat. 1137, Section 520.

[4] Pub. L. 107–56, October 25, 2001, 115 Stat. 272.

adding a new section 5103a titled "Limitation on issuance of hazmat licenses." Section 5103a(a)(1) provides:

> A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Transportation has first determined, upon receipt of a notification under subsection (c)(1)(B), that the individual does not pose a security risk warranting denial of the license.[5]

Section 5103a(a)(2) subjects license renewals to the same requirements.

Section 5103a(c) requires the Attorney General, upon the request of a State in connection with issuance of a hazardous materials endorsement (HME), to carry out a background records check of the individual applying for the endorsement and, upon completing the check, to notify the Secretary (as delegated to the Administrator of TSA) of the results. The Secretary then determines whether the individual poses a security risk warranting denial of the endorsement. The background records check must consist of: (1) a check of the relevant criminal history databases; (2) in the case of an alien, a check of the relevant databases to determine the status of the alien under U.S. immigration laws; and (3) as appropriate, a check of the relevant international databases through Interpol-U.S. National Central Bureau or other appropriate means.

Safe Explosives Act

Congress enacted the Safe Explosives Act (SEA) on November 25, 2002.[6] Sections 1121–1123 of the SEA amended section 842(i) of Title 18 of the U.S. Code by adding several categories to the list of persons who may not lawfully "ship or transport any explosive in or affecting interstate or foreign commerce" or "receive or possess any explosive which has been shipped or transported in or affecting interstate or foreign commerce." Prior to the amendment, 18 U.S.C. 842(i) prohibited, among other things, the transportation of explosives by any person under indictment for or convicted of a felony, a fugitive from justice, an unlawful user or addict of any controlled substance, and any person who had been adjudicated as a mental defective or committed to a mental institution. The amendment added three new categories to the list of prohibited persons: aliens (with certain limited exceptions), persons dishonorably discharged from the armed forces, and former U.S. citizens who have renounced their citizenship. Individuals who violate 18 U.S.C. 842(i) are subject to criminal prosecution.[7] These incidents are investigated by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) of the Department of Justice and referred, as appropriate, to United States Attorneys.

However, 18 U.S.C. 845(a)(1) provides an exception to section 842(i) for "any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation (DOT) and agencies thereof, and which pertain to safety." Under this exception, if DOT regulations address the transportation security issues of persons engaged in a particular aspect of the safe transportation of explosive materials, then those persons are not subject to prosecution under 18 U.S.C. 842(i) while they are engaged in the transportation of explosives in commerce. TSA issued the interim final rule in coordination with agencies within DOT, the Federal Motor Carrier Safety Administration and Research and Special Programs Administration, and triggered this exception. The action TSA takes now to move the date on which fingerprinting must begin does not affect the application of the exception.

The Interim Final Rule

To comply with the mandates of the USA PATRIOT Act, and to trigger the exception in 18 U.S.C. 845(a)(1) for the transportation of explosives, TSA issued the May 2003 IFR. Under the IFR, TSA determines that an individual poses a security threat if he or she: (1) is an alien (subject to certain exceptions) or a U.S. citizen who has renounced his or her U.S. citizenship; (2) is wanted or under indictment for certain felonies; (3) has a conviction in military or civilian court for certain felonies; (4) has been adjudicated as a mental defective or involuntarily committed to a mental institution; or (5) is considered to pose a security threat based on a review of pertinent databases.

The IFR also establishes conditions under which individuals who have been determined to be security threats can appeal the determination, and a waiver process for those individuals who otherwise could not obtain an HME because they have disqualifying felonies, or were adjudicated as mental defectives or involuntarily committed to a mental institution. Finally, the IFR prohibits an individual from holding, and a State from issuing, renewing, or transferring, an HME for a driver unless the individual has met the TSA security threat assessment standards.

Based on the comments received following publication of the IFR and the working sessions with the States, TSA amended the IFR on November 7, 2003, to delay the date on which fingerprint collection would begin. The amended IFR provided that the States must begin collecting fingerprints and the accompanying identification information as of April 1, 2004. Any State unable to meet this deadline was required to submit a fingerprint collection plan to TSA and request an extension of time to submit the biographical information. Under the amended IFR, all States were required to be in compliance with the rule by December 1, 2004.

Summary of the Final Rule

TSA believes that the fingerprint collection date should be delayed so that TSA and each State may develop a threat assessment program within the existing fiscal, procurement, and legal constraints each entity faces. By issuing the rule now, TSA hopes to prevent unnecessary expenditures the States may make in the short term and to provide the States the time needed to develop the program in an organized fashion. This final rule provides that fingerprint collection must begin no later than January 31, 2005. However, TSA will work with States to begin fingerprint collection and submission before that date using pilot programs.

Many States must initiate rulemaking or enact new legislation to authorize the collection of fees to cover any State costs associated with the new program. Some State legislatures meet biannually and many meet for just a few months of the year. Also, many States operate under fiscal and procurement schedules that do not permit the purchase of necessary equipment and software improvements before April 1, 2004.

At the Federal level, TSA will complete the rulemaking proceeding to establish a fee for the security threat assessment.

Prior to January 31, 2005, TSA will conduct name-based, terrorist-focused checks on drivers who are currently authorized to transport hazardous materials. If TSA discovers during the course of these name-based checks that an individual is suspected of posing or poses a security threat, TSA will initiate action to revoke the individual's HME, in accordance with the procedures in 49 CFR 1572.141. The individual will be

[5] The Secretary of Transportation delegated the authority to carry out the provisions of this section to the Under Secretary of Transportation for Security/Administrator of TSA. 68 FR 10988, March 7, 2003.

[6] Pub. L. 107–296, November 25, 2002, 116 Stat. 2280.

[7] The penalty for violation of 18 U.S.C. 842(i) is up to ten years imprisonment and a fine of up to $250,000.

provided with an opportunity to correct underlying records or cases of mistaken identity by submitting fingerprints or corrected court records.

With an estimated population of 3.5 million drivers, the government will prioritize the background check process by searching terrorist-related databases first. TSA believes that this name-based check of all drivers who are currently authorized to transport hazmat will enable the agency to focus on individuals who may pose a more immediate threat of terrorist or other dangerous activity. Following that check, TSA will then search criminal databases that include outstanding criminal wants and warrants, and immigration records to determine citizenship status.

TSA has assessed the risks associated with the transportation of hazardous materials via commercial vehicle and has determined that in conducting name-based checks prior to January 2005, and initiating fingerprint-based criminal history checks as of January 31, 2005, the risks are effectively addressed. The terrorist-related information that TSA will search prior to January 2005, is the best indication of an individual's predisposition to commit or conspire to commit terrorist acts. TSA has determined that the more imminent threat is an individual whose background includes terrorism-related activity. This approach is consistent with the USA PATRIOT Act and meets the needs of the States.

Also, it is important to note that TSA is not delaying the September 2, 2003, compliance date set forth in § 1572.5(b) for surrendering an HME. This section requires any HME holder who does not meet the security threat assessment standards in part 1572 to surrender the endorsement beginning on September 2, 2003. For instance, an individual who knows that he or she has committed a disqualifying offense within the prescribed time periods is required to relinquish his or her HME beginning September 2, 2003. Nothing in this final rule alters this surrender requirement.

In the context of this rulemaking, the surrender requirement buttresses TSA's determination that we should attempt to identify potential terrorist threats from terrorism-related information databases before analyzing criminal history records. As of September 2, 2003, all HME drivers are required to self-report any disqualifying offenses that would appear on a fingerprint-based criminal history records check. TSA will work closely with the State Departments of Motor Vehicles, labor organizations, and the trucking industry to communicate this surrender provision widely and to inform affected drivers of the existing waiver process.

Based on the foregoing, the exception found in 18 U.S.C. 845(a)(1) continues to apply, and persons otherwise prohibited from lawfully possessing explosives who are transporting explosives in commerce would not be subject to criminal prosecution under section 842(i).

This final rule amends the November 2003 IFR by changing the fingerprint start date and the date on which the States may issue, renew, or transfer HMEs only after the threat assessment is complete. In view of the fact that many of the States cannot begin collecting fingerprints or gathering pertinent identification data from drivers by April 1, 2004, and that TSA will not have regulatory authority to charge fees to cover the costs of the security threat assessments before late 2004 when the fee collection rulemaking is complete, TSA is changing the date that all States must begin collecting fingerprints and gathering identification data from hazmat drivers to January 31, 2005. This change accommodates the fiscal and legal tasks that must be completed first.

TSA will complete a rulemaking proceeding to collect fees to cover the cost of each security threat assessment. In the near future, TSA will issue a rule that establishes reasonable fees (Fee Rule) to cover the cost of the hazmat driver security threat assessment.

Section-by-Section Analysis

TSA is adding a definition of "Pilot State" to § 1572.3. A "Pilot State" is a State that volunteers to begin the security threat assessment process prior to January 31, 2005. TSA also is making changes to § 1572.5 concerning the date on which TSA's threat assessment based on fingerprint-based criminal history record checks must be underway. The new dates in paragraph 1572.5(c)(2), and the deletion of the dates in paragraph 1572.5(b)(2), reflect TSA's decision to delay the date on which the collection of fingerprints and accompanying biographical data must begin from April 1, 2004, to January 31, 2005.

TSA is revising paragraph (c)(3) with requirements for States that volunteer to be Pilot States. Pilot States will be required to collect the identifying information required in 49 CFR 1572.5(e) and collect and submit fingerprints in accordance with procedures approved by TSA. TSA will work with Pilot States on procedures for the collection and submission of fingerprints.

TSA is removing the requirement in paragraph 1572.5(c)(4) that States must submit fingerprints and information, or request an extension as of April 1, 2004. The requirement that is now in paragraph 1572.5(c)(4) was in paragraph 1572.5(c)(3)(i) in the original IFR. This paragraph permits the States, in the first 6 months of implementation of the rule, to extend the expiration date of an individual's HME until the State receives from TSA a final notification of the individual's threat assessment. This provision is necessary because in the first 180 days of the program, individuals may not have been given sufficient notice of the TSA threat assessment requirements. Allowing States to extend the expiration date of such an individual's HME will provide TSA with enough time to conduct a security threat assessment without unduly delaying the individual's receipt of a renewed or transferred HME.

Future Rulemaking

TSA plans to publish a document to discuss all comments received in this proceeding and to improve the clarity and organization of the rule text. This should be done in conjunction with the aforementioned rulemaking to establish fees. In addition, TSA may make changes to the existing standards, such as the disqualifying criminal offenses and immigration status and provide more information. TSA will rely heavily on comments that the States and industry have provided and will provide to ensure that no State is forced to adhere to a rigid form of program implementation.

Rulemaking Analyses and Notices

Justification for Immediate Adoption

TSA is issuing this final rule in response to comments received following publication of the May 5, 2003 IFR and subsequent amendment issued on November 3, 2003. TSA has received requests for an extension of time from many States that are not able to establish a fingerprint collection program by April 1, 2004. Many of these States do not wish to file an extension of time and submit a fingerprint collection program, because the fees and fingerprint collection system have not yet been determined and it is difficult to predict how fingerprints will be collected and what portion of the cost, if any, the States must bear.

Eliminating the April 1, 2004 deadline will provide the States more time to devote to developing a cost-effective program through appropriate fiscal and operational planning.

Regulatory Evaluation

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order.

TSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 because there is significant public interest in security issues since the events of September 11, 2001. The IFR and this final rule implements section 1012 of the USA PATRIOT Act by establishing the criteria that will be used in determining whether an individual applying for, transferring, or renewing an HME poses a security risk warranting denial of the endorsement.

This final rule will not impose costs or other economic impacts additional to those that were imposed by the original IFR. This rule simply eliminates the April 1, 2004 date, establishing January 31, 2005 as the date on which fingerprint collection will begin in all States and the Federal government will conduct criminal history background checks, both in accordance with the original rule. Thus, there is no adverse economic impact resulting from the issuance of this final rule, and there may be an economic benefit since the final rule will relieve States of the costs of complying with the fingerprint collection requirements until January 31, 2005. This action is expected to reduce the burden on the States by providing additional time to the States to implement this program. TSA believes it is advisable to publish the rule now so that States do not make expenditures to meet the April 1 date that may subsequently be unnecessary or minimized.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980, as amended, (RFA) was enacted by Congress to ensure that small entities (small businesses, small not-for-profit organizations, and small governmental jurisdictions) are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires agencies to review rules to determine if they have "a significant economic impact on a substantial number of small entities." TSA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. This action only extends the date on which fingerprint collection must begin, which should not impose any costs on small entities. Any costs associated with the security threat assessment program stem from the interim final rule that was published on May 5, 2003.

TSA conducted the required review of this rule and, accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. This final rule contains information collection activities subject to the PRA. Accordingly, the information requirements have been submitted to OMB for its review (68 FR 63033, November 7, 2003). The comment period closed on January 6, 2004.

As protection provided by the Paperwork Reduction Act, as amended, 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 number for this information collection will be published in the **Federal Register** after OMB approves it.

Executive Order 13132 (Federalism)

Executive Order 13132 requires TSA 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" are 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 the Executive Order, TSA may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

This action has been analyzed in accordance with the principles and criteria in the Executive Order, and it has been determined that this final rule does have Federalism implications or a substantial direct effect on the States. This final rule changes the date on which the States may issue, renew or transfer a hazardous materials endorsement based on a security threat assessment. This action should reduce burdens on the State by providing additional time to the States to obtain necessary funding and legal authority to implement this program. TSA will continue to consult extensively with the States to ensure that any burdens are minimized to the extent possible.

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 TSA 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 objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. In addition, section 205 allows TSA 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 result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Thus, TSA has not prepared a written assessment under the UMRA.

Environmental Analysis

TSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this final rule will not have any significant impact on the quality of the human environment.

Energy Impact

TSA has assessed the energy impact of this rule in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). TSA has determined that this rule is not a major regulatory action under the provisions of the EPCA.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from

engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. This rule applies only to individuals applying for a State-issued hazardous materials endorsement for a commercial drivers license. Thus, TSA has determined that this rule will have no impact on trade.

List of Subjects in 49 CFR Part 1572

Commercial drivers license, Criminal history background checks, Explosives, Hazardous materials, Motor carriers, Motor vehicle carriers, Security measures, Security threat assessment.

The Amendments

■ For the reasons set forth in the preamble, the Transportation Security Administration amends 49 CFR chapter XII, subchapter D as follows:

PART 1572—CREDENTIALING AND BACKGROUND CHECKS FOR LAND TRANSPORTATION SECURITY

■ 1. The authority citation for part 1572 continues to read as follows:

Authority: 49 U.S.C. 114, 5103a, 40113, 46105.

■ 2. In § 1572.3 add the following definition:

§ 1572.3 Terms used in this part.

* * * * *

Pilot State means a State that volunteers to begin the security threat assessment process prior to January 31, 2005.

* * * * *

■ 3. In § 1572.5, revise paragraphs (b)(2), (c)(1), (c)(2), (c)(3), and (c)(4) to read as follows:

§ 1572.5 Security threat assessment for commercial drivers' licenses with a hazardous materials endorsement.

* * * * *

(b) * * *

(2) *Submission of fingerprints.* (i) If TSA determines that an individual does not meet the security threat assessment standards described in paragraph (d) of this section prior to completing a fingerprint-based criminal history records check and directs the State to revoke the individual's hazardous materials endorsement, the individual may submit fingerprints in a form and manner specified by TSA if he or she believes that the determination is based on mistaken identity.

(ii) When so notified by the State, an individual must submit fingerprints in a form and manner specified by the State and TSA when the individual applies to obtain, renew, or transfer a hazardous materials endorsement for a CDL, or when requested by TSA.

(c) *States.* (1) Each State must revoke an individual's hazardous materials endorsement if TSA informs the State that the individual does not meet the standards for security threat assessment in paragraph (d) of this section.

(2) Beginning January 31, 2005:

(i) No State may issue, renew, or transfer a hazardous materials endorsement for a CDL unless the State receives a Notification of No Security Threat from TSA.

(ii) Each State must notify each individual holding a hazardous materials endorsement issued by that State that he or she will be subject to the security threat assessment described in this section as part of any application for renewal of the endorsement, at least 180 days prior to the expiration date of the individual's endorsement. The notice must inform the individual that he or she may initiate the security threat assessment required by this section at any time after receiving the notice, but no later than 90 days before the expiration date of the individual's endorsement.

(3) Prior to January 31, 2005, as approved by TSA, a Pilot State may not issue, renew or transfer a hazardous materials endorsement for a CDL unless the Pilot State—

(i) Collects the information required in § 1572.5(e);

(ii) Collects and submits fingerprints in accordance with procedures approved by TSA; and

(iii) Receives a Notification of No Security Threat from TSA.

(4) From January 31, 2005 to June 28, 2005, while TSA is conducting a security threat assessment on an individual applying to renew or transfer a hazardous materials endorsement, the State that issued the endorsement may extend the expiration date of the individual's endorsement until the State receives a Final Notification of Threat Assessment or Notification of No Security Threat from TSA.

* * * * *

Issued in Arlington, VA, on April 1, 2004.

David M. Stone,

Acting Administrator.

[FR Doc. 04–7801 Filed 4–1–04; 2:37 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 000922272–4087–02 ; I.D. 061600A]

RIN 0648–AO16

Taking of the Cook Inlet, Alaska Stock of Beluga Whales by Alaska Natives

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule, response to comments.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), NMFS issues regulations to govern the taking of Cook Inlet (CI) beluga whales by Alaska Natives for subsistence purposes. These regulations were developed after considering comments received from the public, stipulations agreed to in the record of hearing before Administrative Law Judge Parlen L. McKenna (Judge McKenna) in December 2000, in Anchorage, AK, and subsequent negotiations with the parties to the hearing. The regulations are intended to conserve and manage CI beluga whales under applicable provisions of the MMPA.

DATES: Effective May 6, 2004.

ADDRESSES: Copies of the final Environmental Impact Statement (EIS), Record of Decision (ROD) and other information related to this rule may be obtained by writing to Chief, Protected Resources Division, NMFS Alaska Regional Office, P.O. Box 21668, Juneau, AK 99802. Documents related to these harvest regulations and on related actions, including the EIS and ROD, are available on the Internet at the following address: *http://www.fakr.noaa.gov/protectedresources/whales/beluga.htm.*

FOR FURTHER INFORMATION CONTACT: Barbara Mahoney or Brad Smith, NMFS, Alaska Region, Anchorage Field Office, (907) 271–5006, fax (907) 271–3030; or Thomas Eagle, NMFS Office of Protected Resources, (301) 713–2322, ext. 105, fax (301) 713–0376.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 2000, NMFS proposed harvest regulations (65 ER 59164) governing the take of CI beluga whales by Alaska Natives. In accordance with the Administrative Procedure Act, 5

U.S.C. 551–559, and the procedures (50 CFR part 228) for hearings pursuant to section 103(d) of the MMPA, a public evidentiary hearing was held before Judge McKenna, in Anchorage, AK, on December 5–8, 2000. The following participants appeared at the hearing represented by either legal counsel or a designated non-attorney representative: Alaska Oil and Gas Association, Joel and Debra Blatchford, Cook Inlet Treaty Tribes, Marine Mammal Commission (MMC), Native Village of Tyonek, Trustees for Alaska. and NMFS. After considering the administrative record, written records forwarded to his office, and stipulations and evidence adduced at the formal hearing, Judge McKenna forwarded a recommended decision to NMFS on March 29, 2002. A notice of availability of the recommended decision was published on May 7, 2002, (67 FR 30646) with a 20–day comment period. NMFS did not receive any comments on the recommended decision.

The CI stock of beluga whales is one of five recognized stocks in Alaska and is genetically and geographically isolated from the other Alaska beluga whale stocks. The distribution of the CI stock is centered in the upper portion of the inlet during much of the year, which makes them especially susceptible to hunting and the effects of other human-related activities, due to their proximity to Anchorage, AK. The CI beluga whale stock was hunted by Alaska Natives who reside in communities on or near the inlet, and by hunters who have moved into Anchorage from other Alaska towns and villages.

The CI beluga whale stock declined dramatically between 1994 and 1998. Results of aerial surveys conducted by the National Marine Mammal Laboratory, NMFS, indicated that the CI beluga whale stock declined by 47 percent between 1994 (estimate of beluga whales in Cook Inlet, n = 653) and 1998 (n = 347). According to a study conducted by Alaska Native hunters during 1995 and 1996, the estimated harvest of CI beluga whales (including struck and lost whales) averaged 97 whales per year. Based on information collected by the Alaska Department of Fish and Game, the Cook Inlet Marine Mammal Council, data compiled by NMFS based on reports from hunters, and the direct observation by NMFS on harvested whales, NMFS estimated that harvest from 1994 through 1998 averaged 67 whales per year. Harvest at these rates could account for the 15 percent per year decline observed between 1994 and 1998. The annual harvest estimates and rate of decline from 1994 through 1998 indicate that the harvest was unsustainable.

NMFS initiated a status review of the CI beluga whale stock on November 19, 1998 (63 FR 64228). As a result of this review, NMFS determined that the stock had declined by approximately 50 percent between 1994 and 1998, falling below its maximum net productivity level (MNPL) and, therefore, was depleted as defined in the MMPA. NMFS published a proposed rule to designate the CI stock of beluga whales as depleted under the MMPA on October 19, 1999 (64 FR 56298). Estimates derived from counts made by the Alaska Department of Fish and Game in the 1960s and 1970s, indicated that the abundance of CI beluga whales was as high as 1,293 individuals as recently as 1979. These estimates supported NMFS' "depleted" determination and indicated that the extent of depletion (as a proportion of maximum historical abundance) was much greater than the surveys from 1994–1998 indicated. NMFS published the final depleted designation on May 31, 2000 (65 FR 34590).

MMPA section 101(b), 16 U.S.C. 1371(b), provides an exception to a general moratorium on the taking of marine mammals by allowing any Indian, Aleut, or Eskimo who resides in Alaska and dwells on the coast of the North Pacific Ocean or the Arctic Ocean to take any marine mammal if such taking is for subsistence purposes or for creating and selling authentic Native articles of handicrafts and clothing and is not accomplished in a wasteful manner. Under this exemption, the large population of Alaska Natives in the CI area hunted beluga whales in large numbers to meet local needs. Recognizing that the CI stock could no longer withstand the level of known hunting that occurred between 1994 and 1998, and observing fewer beluga whales in Cook Inlet, the hunters voluntarily imposed a moratorium on hunting in 1999. To further address this critical issue, the following temporary moratorium was enacted (Pub. L. 106–31, section 3022, 113 Stat. 57, 100 (May 21, 1999)):

> Notwithstanding any other provision of law, the taking of a Cook Inlet beluga whale under the exemption provided in Section 101(b) of the Marine Mammal Protection Act between the date of the enactment of this Act and October 1, 2000, shall be considered a violation of such Act unless such taking occurs pursuant to a cooperative agreement between the National Marine Fisheries Service and affected Alaska Native Organizations.

This moratorium was made permanent on December 21, 2000 (Pub. L. 106–553, 114 Stat. 2762, 2762A–108). As a result of this statutory moratorium, hunting CI beluga whales is prohibited unless an Alaska Native organization (ANO) enters into a cooperative agreement with NMFS. The agreement will provide for the management of CI beluga whales and will include a limited harvest that will allow successful recovery of this stock.

NMFS has continued beluga whale abundance surveys in CI during June of each year. The abundance estimates from the June 1999 through June 2003 surveys were 357, 435, 386, 313, and 357 animals, respectively.

NMFS may regulate the taking of marine mammals by Alaska Natives when the stock in question is designated as "depleted" pursuant to the MMPA and is followed by an agency public hearing on the record (pursuant to sections 101(b) and 103(d) of the MMPA). Therefore, the designation of the CI beluga whale stock as depleted under the MMPA was necessary prior to any rulemaking that might limit their taking by Alaska Natives.

On October 4, 2000, proposed regulations were published (65 FR 59164) that would limit the harvest of CI beluga whales by Alaska Natives. Simultaneously, a draft EIS filed with the Environmental Protection Agency was made available to other Federal agencies and the public for comment. The regulations proposed by NMFS would require that: (1) takes can only occur under an agreement between NMFS and an ANO pursuant to section 119 of the MMPA, (2) takes shall be limited to no more than two strikes annually, (3) the sale of CI beluga whale products shall be prohibited, (4) all hunting shall occur on or after July 15 of each year, and (5) the harvest of calves, or adult whales with calves, shall be prohibited. The objective of the regulations is to recover the depleted stock of CI beluga whales to its optimum sustainable population (OSP) level, while preserving the traditional subsistence use of the CI beluga whale to support the cultural, spiritual, social, economic and nutritional needs of Alaska Natives.

The proposed regulations and all relevant available information were reviewed on the record in a hearing held pursuant to MMPA section 103(d), implementing regulations at 50 CFR part 228, and 5 U.S.C. 551–559. The hearing focused primarily on the following issues: (1) existing population estimates of CI beluga whales; (2) the expected impact of the proposed regulations on the optimum sustainable CI beluga whale population; and (3) the effect of regulating the take of CI beluga whales to the Native communities.

Judge McKenna issued his recommended decision on March 29, 2002. That decision addressed all the immediate issues raised by the parties at the hearing and subsequent meetings. However, provisions governing the taking of beluga whales during 2005 and subsequent years were reserved to allow additional studies. Judge McKenna, in consultation with the parties to this proceeding, will recommend appropriate harvest levels for hunting CI beluga whales for 2005 and subsequent years. NMFS will consider that recommendation when promulgating regulations for subsistence harvests of CI beluga whales after 2004.

Decision of the Assistant Administrator

The Assistant Administrator for Fisheries finds that the recovery of CI beluga whales can occur while allowing a small take by Alaska Natives. The decision is based on scientific research on this population of beluga whales, the record of hearing, Judge McKenna's recommended decision, comments from the general public, and the final EIS. For purposes of interim harvest for 2001–2004, the record indicates the interim harvest of six whales in four years would not significantly disadvantage CI beluga whales. To insure the recovery of this beluga stock, NMFS will continue to monitor and assess the status of CI beluga whales.

Comments and Responses

NMFS received 15 letters from the public during the comment period on the proposed regulations and the draft EIS. The content of most of the comments focused on the draft EIS (i.e., on alternatives to the proposed regulations identified as the preferred alternative in the draft EIS or on the analyses contained in the draft EIS) rather than the proposed regulations. NMFS has responded to all the comments received on both the proposed regulations and the draft EIS, as well as those made on the stipulations agreed upon by the parties in the record of the Judge McKenna's decision, in the final EIS. The final EIS was approved prior to the publication of these regulations and is now available. (See ADDRESSES). As a result, only those comments that specifically addressed the proposed harvest regulations are addressed here.

Comment 1: The regulations should limit the Native harvest at a level that would not exceed two (2) strikes annually, until such time that the stock has recovered to OSP as this level of harvest would have minimal effect on the time to recovery to OSP.

Response: Although NMFS proposed to limit subsistence harvest by Alaska Natives to no more than two strikes per year, the final rule has been revised downward to 1.5 strikes per year. During the hearing before Judge McKenna, one of the parties noted that NMFS analyses supporting the proposed rule (found in the draft EIS) did not adequately account for uncertainty, and incorporating that uncertainty suggested that the impact to the stock (resulting delay in recovery) was greater than NMFS stated in the draft EIS. Other parties at the hearing were interested in allowing the level of harvest to be increased as the population size increased. Consequently, NMFS and the other parties to the hearing agreed to an interim harvest limit of 6 whales over a 4–year period and to submit a long-term (2005 and beyond) harvest strategy to Judge McKenna in March 2004. The parties to the hearing agreed that the interim approach would allow a limited harvest to meet traditional subsistence needs and would not cause a significant adverse impact to the stock.

Comment 2: No harvest should occur (a moratorium) until such time that the stock recovers to the lower limit of the OSP.

Response: The management objective of this final rule is twofold: (1) to recover this depleted stock to its OSP level, and (2) to provide for a continued traditional harvest by Alaska Natives in the CI region. Prohibiting a traditional harvest entirely would not provide for Alaska Native needs.

Comment 3: Additional hunting regulations are required and all hunting should occur after July 15 of each year, the taking of calves or adult whales with calves should be prohibited, and the protocols to maximize strike efficiency should be included.

Response: Specific hunting restrictions and mitigating measures will be included in annual co-management agreements which specify the terms of each year's hunt. The taking of calves or adult whales with calves will be prohibited. Native hunters have informed NMFS that favorable weather conditions in early July allow for improved hunt efficiency. There is sufficient information regarding the calving of CI beluga whales to prohibit hunting prior to July 1 of each year in order to protect pregnant females. However, at least for these regulations for the period of 2001 through 2004, there is insufficient information to suggest that July 15, rather than July 1, would provide additional insurance against taking pregnant females. Therefore, the harvest could begin on July 1 of each year so that hunters could obtain the increased efficiency expected in early July. Protocols for the harvest, including how to maximize strike efficiency, will be included in co-management agreements.

Comment 4: The hunt should not cause an additional delay in the recovery of the beluga whales.

Response: For the 2001–2004 period, a not-to-exceed harvest of three strikes every two years (1.5 whales per year), as compared to a "no harvest" alternative, minimally extends the CI beluga whale estimated time of recovery to OSP. The allowable harvest addresses the second management objective of allowing a traditional use by Alaska Natives.

Comment 5: The harvest was the only known cause of the decline of the beluga whale population in Cook Inlet.

Response: Available information suggests that harvest was the principal factor in the decline of the CI stock of beluga whales in the past decade, and additional discussion is included in the EIS.

Comment 6: The subsistence harvest should not be the only factor to be considered in planning for the recovery and protection of these whales.

Response: Subsistence harvest should not be the only factor considered in the development of a conservation plan for this stock. NMFS has stated that harvest was the principal factor implicated in the decline. However, the draft and final EIS examined items such as habitat needs, vessel traffic, availability of prey, disturbance, contaminant loads in CI beluga whales, mass stranding and predation, disease, as well as other factors that need to be considered in the development of a conservation plan for this stock.

Comment 7: NMFS should collect more data through observations before placing any restrictions on the harvest. The comment also reminded NMFS that beluga whales are an important food source for Alaska Natives who live in the area.

Response: NMFS will continue to collect information on the CI stock of beluga whales to better understand their population abundance and biology. However, implementing regulations to restrict the harvest should not be delayed. The available information indicates that the CI beluga whale stock has experienced a significant decline, and continued unregulated harvest would exacerbate that decline. Therefore, harvest regulations need to be in place to promote the recovery of this beluga whale stock. NMFS has considered the cultural needs of Alaska Natives and supports a continued, but limited, harvest for subsistence.

Comment 8: The depleted determination and hunting restrictions are very necessary (and belated). NMFS should also implement a conservation plan under the MMPA to address other issues such as education and enforcement.

Response: NMFS recognized the need for the depleted determination and the harvest restrictions in this rule. NMFS also intends to develop a conservation plan for these whales. NMFS agrees that education and enforcement are necessary and intends for these elements to be part of a conservation plan.

Comment 9: The management approach suggested by NMFS in the proposed rule (i.e., a combination of Federal regulations and co-management agreements that will allow recovery of the beluga whale stock) was supported by several comments.

Response: The harvest management strategy represents a combination of Federal statutory measures (MMPA and Pub. L. 106–553, 114 Stat. 2762, 2762A–108), regulations, and co-management agreements. Regulations will establish a harvest limit to provide for the recovery of the stock. The co-management agreements will authorize the strikes, set specific harvest practices to improve efficiency and report on strikes, and establish a cooperative effort to recover the stock.

Comment 10: Subsistence hunting needs to be managed through a co-management agreement to ensure hunter involvement.

Response: The annual allocation and harvest of beluga whales will be coordinated through a co-management agreement with ANOs pursuant to the recommended decision by Judge McKenna and section 119 of the MMPA.

Comment 11: A substantial increase in the funding committed to co-management is needed.

Response: Additional funding would allow Alaska Natives greater participation in the conservation of marine mammals.

Comment 12: A limited hunt is supported only if NMFS can enforce the strike limit. The mechanisms to enforce and monitor the hunt are not well described in the proposed rule.

Response: NMFS Enforcement has increased its efforts since 1999 to monitor the hunting activity allowed through the co-management agreements to ensure the strike limit is enforced. All co-management agreements for CI beluga whales have included provisions to ensure compliance with the agreement and an efficient, non-wasteful harvest, including provisions for notifying NMFS Enforcement prior to the hunt and for providing a jawbone to NMFS soon after any harvest. Copies of co-management agreements were appended to the draft and final EIS.

Comment 13: NMFS should be the primary authority to enforce any harvest restrictions adopted pursuant to a co-management agreement or to regulations. The enforcement plan needs to be explained in the EIS along with a description of NMFS' efforts to work within the Native communities to develop a system of community self-monitoring.

Response: NMFS may assert its Federal authority to enforce any provisions of the MMPA that are applicable to the Native harvest of beluga whales. Such assertions of Federal authority would be preceded by consultation with co-management partners as specified in the co-management agreement. In all cases, NMFS and its co-management partners will communicate on an as-needed basis concerning matters related to the enforcement of the agreement or the harvest. Under each agreement, either party may initiate an enforcement action for a violation of a prohibition involving the Native take of the CI whale. Therefore, self-policing or monitoring is a component of each agreement. Copies of co-management agreements were appended to the draft and final EIS.

Comment 14: Any take by any Alaska Native in violation of the final regulations to restrict the harvest should be viewed as a violation of the MMPA.

Response: NMFS agrees.

Comment 15: The sale of edible products from CI beluga whales should be prohibited. The sale of all beluga whale edible parts (excluding traditional trade and barter) should be prohibited to simplify enforcement.

Response: NMFS is prohibiting the sale of CI beluga whale products, except those used for authentic Native articles of handicraft and clothing, to eliminate any commercial incentive, while allowing for a traditional harvest. Thus, these regulations prohibit the sale of edible products from CI beluga whales. It is not necessary to prohibit the sale of edible parts of other stocks of beluga whales through Federal regulations because other ANOs have management plans that prohibit the sale of edible products from other beluga whale stocks.

Comment 16: An explanation of the proposed periodic review of the harvest, population status and trends, and allowance to adjust the number of strikes is needed. NMFS should consider a more restrictive alternative (i.e., no harvest) if the population decline does not stop. Alternatively, the harvest limits should be revised appropriately should the population increase significantly.

Response: Stock status and trends should be reviewed. This is also consistent with the recommended decision by Judge McKenna. Section 103(e) of the MMPA also requires that NMFS conduct a periodic review of any regulation promulgated pursuant to that section, and modifications may be made in such a manner as the Secretary deems consistent with and necessary to carry out purposes of the MMPA. The review will compare the results of the annual survey data with the management of the harvest to determine the status of the CI beluga whale population and to determine whether changes in the harvest or level of harvest should occur.

Comment 17: The regulation provides no provision for increasing the number of strikes if new information regarding the health of the CI beluga whale population comes to light. The regulations should make provisions for altering the number of strikes for subsistence harvest if new, valid information changes the analysis of the CI beluga whale population.

Response: See response to Comment 16 above. In addition, this final rule is an interim measure to govern a short-term harvest (2001 through 2004) while NMFS, in consultation with the other parties to the hearing, prepares a recommended harvest strategy that would allow the harvest to be adjusted depending upon the status of the population.

Comment 18: NMFS placed too much blame on the Native harvest for the observed decline in CI beluga whales. While Native hunting may have played a role in the decline of the whales, nobody is really sure why the population is suffering.

Response: The record indicates that the unregulated harvest of CI beluga whales between 1994 and 1998 resulted in high levels of removals from this population. These harvest levels alone could account for the decline. However, while harvest has not occurred or has been at a very low level since 1999, the population has not shown signs of recovery. NMFS acknowledges other factors may be contributing to the apparent failure of the population to increase. NMFS will continue to examine other factors that may be affecting the population. See responses to comments 5 and 6 for additional information.

Comment 19: Whether or not a harvest was needed to promote Native culture and tradition was questioned. Hunting for CI beluga whales has ceased

in the past for up to 30 years without harming the Native culture.

Response: The Native Village of Tyonek has a history of harvesting beluga whales in Cook Inlet and has continued this practice since the 1970s. Although Tyonek hunters did not take CI beluga whales between the 1940s and 1970s, beluga whale hunting based out of the Anchorage area did occur during this period, and the products were available to Anchorage and other local communities. Generally, subsistence foods other than beluga whales, as well as non-subsistence foods, have become more prevalent in the diet of Alaska Natives who live in the CI area in recent years. As a result, the reliance on whales as a primary food source has diminished. However, the cultural importance of whaling has never disappeared. Alaska Natives continue to share the meat and blubber in traditional patterns that reaffirm social ties and promote ethnic identity. The use of beluga whale products and other subsistence resources continues to be economically, nutritionally, and culturally valuable to Alaska Natives in the CI area.

Comment 20: NMFS should reinstate the legislative prohibitions that expired 1 October 2000 to prevent a resumption of unregulated hunting.

Response: NMFS cannot reinstate legislative provisions. However, Congress reinstated the requirement for co-management agreements to govern beluga whale hunting in Cook Inlet on December 21, 2000, without an expiration date (Pub. L. 106–553, section 1(a)(2), 114 Stat. 2762, 2762A–108).

Comment 21: Observed or potential decreases in other beluga whale stocks throughout Alaska might result in problems similar to that found in Cook Inlet (depleted population with harvest limitations).

Response: The abundance estimates and harvest reports for the other four beluga whale populations in Alaska indicate they are healthy and not in danger of depletion at this time. The Alaska Beluga Whale Committee (ABWC), a statewide ANO consisting of beluga whale hunters, co-manages the four other stocks of beluga whales in Alaska. The ABWC flies aerial surveys for abundance estimates and collects harvest information on the beluga whale stocks to monitor the abundance and health of these stocks. This monitoring helps prevent problems similar to those experienced in CI. Furthermore, the situation in CI is unique in that more than 20,000 Alaska Natives, each of which enjoys the Native exemption to the MMPA, are concentrated in a relatively small area. The CI beluga population is isolated from other beluga stocks and is the only beluga population near the large concentration of Alaska Natives that inhabit Anchorage. Therefore, this small, isolated population is subject to over-harvest if conservation measures are not implemented.

Final Rule as Compared to the Proposed Rule

The final regulations are similar to and logically follow from the proposed regulations (65 FR 59164). Both the proposed and final regulations require that any taking of a CI beluga whale by an Alaska Native must be authorized under a co-management agreement between NMFS and an ANO. The proposed regulations would have allowed two strikes annually on CI beluga whales. The strike limitations in the final regulations, which are limited to a 4–year period, allow a total of six strikes in four years allocated through co-management agreement(s). These harvest levels are a small fraction of the harvest that occurred prior to 1999.

Provisions to govern the taking of CI beluga during 2005 and subsequent years will be prepared during 2004 and submitted to Judge McKenna in March 2004. Judge McKenna will retain jurisdiction over the rulemaking pending the gathering of data by NMFS, in consultation with the other parties to this proceeding, so that the harvest regime can be developed for establishing appropriate harvest levels for 2005 and subsequent years.

The regulations include emergency provisions for suspension of takes during 2001–2004. The taking of CI beluga whales authorized under these regulations will be suspended whenever unusual mortalities exceed six whales in any year. Unusual mortalities include documented human-caused mortality (excluding legal harvests but including illegal takings, net entanglements, and boat strikes) and all documented mortality resulting from unknown or natural causes that occur above normal levels, considered at this time to be 12 per year. The final regulations provide more detail on recovery from unusually high mortality events by stating that whenever mortalities exceed 18, subsequent harvests would be stopped until this loss is recovered through foregone future harvests and natural recruitment. Legally-harvested whales were not to have been included in calculating unusual mortalities, and the final regulations have been reworded to clarify this point.

The proposed and final regulations prohibit the sale of CI beluga whale parts or products, including food stuffs, except those used for authentic Native articles of handicraft and clothing. Instead of the whale hunt beginning on or after July 15 of each year, the final regulations allow the take to occur no earlier than July 1 of each year. This change in date should still protect near-term pregnant females while allowing Alaska Natives more opportunities to hunt during their traditional season. See response to comment 3.

The proposed rule did not include provisions related to the allocation of strikes. In accordance with agreement of the parties of the hearing and Judge McKenna's recommended decision, the final rule governs the allocation of strikes.

The proposed regulations prohibited the taking of a calf or an adult whale accompanied by a maternally-dependent calf, and the final regulations prohibit the taking of any calf or an adult accompanied by a calf. This change is necessary because the condition of being maternally-dependent cannot be defined or ascertained, nor would such a condition be enforceable. Finally, the organizational structure of the proposed regulations has been reconfigured to make the format of these final regulations adaptable to or compatible with the forthcoming harvest regulations for 2005 and subsequent years.

Findings of the Assistant Administrator

The Assistant Administrator made 8 findings on issues identified for the hearing, and these were based on Judge McKenna's recommended decision.

1. The CI beluga whale stock is a "depleted" marine mammal population within the meaning of the MMPA.

2. The Alaska Native subsistence harvest of CI beluga whales is subject to regulation in accordance with the MMPA.

3. The proposed regulations published in the **Federal Register** on October 4, 2000, should be modified in such a way as to promote additional scientific research and data collection and analysis of the CI beluga whales and their habitat to address remaining uncertainty in the population dynamics of the CI beluga whales.

4. An interim subsistence harvest regime should be established for the period 2001–2004 which provides for the allocation of a total of six strikes of CI beluga whales pursuant to co-management agreements. To address remaining uncertainty concerning the population dynamics of the CI beluga whales, these interim regulations should provide for the collection and analysis

of scientific data which can be used to establish a harvest regime for future years.

5. Based on the parties' stipulations, over four years (2001–2004) four strikes, not to exceed one strike per year, are allocated to the Native Village of Tyonek pursuant to a co-management agreement. The remaining two strikes, with no more than one strike being allocated every other year, are allocated to other CI Alaska Native subsistence community hunters.

6. The best scientific evidence available demonstrates that the interim harvest regime agreed to by the parties will not significantly disadvantage the CI beluga whale population.

7. Based on the parties' stipulations, Judge McKenna should retain jurisdiction over the rulemaking, pending data collection and developments (by NMFS in consultation with the participants to this proceeding) of a regime for determining allowable subsistence harvest levels for 2005 and subsequent years.

8. Based on the parties' stipulations, NMFS should submit a final recommendation on the long term subsistence harvest regime for 2005 and subsequent years to Judge McKenna and the other parties no later than March 15, 2004.

Evidence to Support the Assistant Administrator's Findings

The critical evidence for all of the findings are the data and analyses supporting population estimates and management actions. The pertinent sources of data in the record are aerial surveys and reports, harvest information and reports, and testimony from witnesses.

Aerial survey data are collected by NMFS observers from a fixed wing aircraft. Aerial surveys were conducted in June of each year since 1994, except for a survey in July 1995, with multiple surveys in upper CI. Four or five observers, often including a Native hunter representative, have undertaken the surveys, looking for and counting beluga whales while videotaping the whale groups. The CI coastline is surveyed and east-west transects are flown in the middle Inlet, covering 25 to 30 percent of the entire CI. The videotapes are later analyzed to provide a correction factor that is used to convert the observer counts to an estimate of the abundance.

Harvest reports have been provided to NMFS from the Alaska Department of Fish and Game, ABWC, the Cook Inlet Marine Mammal Council, and Alaska Native beluga hunters. The most thorough reports were provided, under co-management efforts, by the Cook Inlet Marine Mammal Council in 1995 and 1996. These reports stated that the two-year harvest of CI beluga whales (including struck and lost whales) averaged 97 whales per year. The other reports, although not as reliable because of fewer direct contacts with the CI beluga hunters, also demonstrated a large harvest, with an annual harvest estimate of 67 whales from 1994 through 1998 (including struck and lost).

A. Population Estimates

Parties to the hearing addressed several estimates related to the population in an attempt to resolve uncertainties related to them.

(1) Current Population Size. The parties to the hearing agreed to defer a ruling on the current population size, and Judge McKenna's recommended decision included such a deferral. NMFS will continue its annual abundance surveys for this population in the immediate future.

(2) Carrying Capacity. Based on the evidence adduced at the hearing, NMFS would need a number of years of annual abundance estimates to accurately determine the carrying capacity of CI beluga whales with any reliable degree of certainty. However, NMFS believes the estimate of carrying capacity presented in the EIS is reasonable for interim management purposes.

(3) Intrinsic Rate of Growth (Rmax). Rmax is the maximum net productivity rate of CI beluga whales on an annual basis. Rmax is derived by subtracting natural mortality from the gross annual reproduction rate. NMFS determined that 4 percent, amounting to 10 to 12 marine mammals added to the population on an annual basis, is reasonable for cetacean populations similar in size to the CI beluga whales. However, Rmax for CI beluga whales will be reassessed as new data become available. .

(4) Optimum Sustainable Population (OSP). When a population like CI beluga whales is below OSP, it is considered depleted as defined under the MMPA. OSP is a range of population sizes, the upper end of which is the maximum number of animals that the ecosystem can support (carrying capacity). The lower end is determined by estimating what stock abundance, in relation to the carrying capacity, will produce the maximum net increase in the population and is called the MNPL. Historically, NMFS has used 60 percent of the carrying capacity as the MNPL for regulatory purposes, and there was insufficient information to deviate from that value for CI beluga whales. An improved estimate of OSP may be derived after future abundance data are acquired.

(5) Recovery time. The estimated recovery time NMFS used in the proposed rule was subject to an appreciable degree of uncertainty, and the parties at the hearing agreed to defer a ruling on recovery time. Judge McKenna's recommended decision incorporated this agreement to defer an estimate of recovery time until additional information had been collected.

B. Co-management and Enforcement

Judge McKenna recommended that the harvest regulations should address allocation of strikes through a co-management process. Regulations for long term harvest will be deferred until more information is collected and analyzed during the interim harvest period (2001–2004). Enforcement will also be addressed in the co-management context.

Regulations

NMFS has proposed regulations governing the harvest of CI beluga whales for the years 2001–2004. A long term harvest plan is deferred pending further discussions among the parties to the proceedings.

In addition to the alternative NMFS has adopted from the final EIS, NMFS considered all regulatory alternatives contained in the final EIS, and concluded that the recommended action is the preferred alternative, which also represents the best approach under the MMPA. The final EIS is incorporated by reference in this final rule. The evidence does not support a "no harvest" approach, as proposed in Alternatives 1 and 6 because a "no harvest" regime would fail to meet the objective of meeting traditional subsistence needs. The reduced harvest regimes in Alternatives 2 (one strike annually until the stock recovers to OSP) and 3 (one strike annually for eight years then two strikes annually until the stock recovers to its OSP) are also insufficient to meet traditional subsistence needs of all CI beluga whale hunters. Alternative 5 (annual take level based on a fixed percentage of stock size until the stock recovers to OSP) would result in an unacceptable delay in the recovery of the stock to its OSP. Alternative 4 (two strikes annually until the stock recovered to its OSP) was rejected because NMFS' analysis of the effects of this harvest (delay in the time for the stock to recover to OSP) did not adequately incorporate scientific uncertainty. NMFS has, therefore, agreed to this short-term alternative

pending a more thorough analysis that incorporates scientific uncertainty and additional data.

Pursuant to sections 101 and 103(d) of the MMPA and regulations at 50 CFR Part 228, NMFS initiated an on-the-record, administrative hearing process regarding the proposed regulations. The hearing was convened before Judge McKenna. Seven parties participated in the hearing. After considering the administrative record, written records forwarded to him, and stipulations and evidence adduced at the formal hearing, Judge McKenna forwarded a recommended decision to NMFS on March 29, 2002.

On May 7, 2002, NMFS published a notice (67 FR 30646) announcing the receipt of the recommended decision and made it available for review, as required by regulations (50 CFR 228.20(c)). NMFS provided a 20–day comment period for the recommended decision as required by procedural regulations. NMFS received no comments on the recommended decision during the comment period.

NMFS is required to make a final decision on the proposed regulations following the comment period that includes (1) a statement containing a description of the history of the proceeding, (2) findings on the issues of fact with the reasons therefore, and (3) rulings on issues of law. The decision must be published in the **Federal Register** and final regulations must be promulgated with the decision. NMFS publishes these final regulations for the harvest of CI beluga whales from 2001 through 2004.

These regulations do not define the term "calf". For the purposes of these short-term harvest regulations, a definition of "calf" will be included in authorizing co-management agreements subsequent to the publication of the regulations. This definition would provide sufficient guidance to hunters and enforcement officials for implementation of the regulations.

Classification

National Environmental Policy Act

NMFS has prepared a final EIS to address actions taken to manage and recover this stock. The primary management action is to limit Native harvest of CI beluga whales. The impact of this action was evaluated in the final EIS through a model which examined the length of time it would take for the stock to recover under different harvest alternatives. The preferred harvest plan provided for the cultural needs of Alaska Natives by allowing up to six (6) strikes (multiple strikes on one whale equals one (1) strike) in four (4) years, while not significantly extending the time required for this stock to recover. The final EIS also presented an assessment of the impacts of other anthropogenic activities that might impact CI beluga whales or their habitat. This assessment included a discussion of the cumulative impacts and evaluated the measures needed for the protection and conservation of important CI beluga whale habitats.

Paperwork Reduction Act

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980.

Endangered Species Act (ESA)

This rule does not affect other species listed under the ESA and whose distribution includes the lower part of CI. These species include humpback and fin whales and the western Distinct Population Segment of Steller sea lions. Therefore, this final rule making does not impact any ESA listed species or its critical habitat.

Executive Order 12866 – Regulatory Planning and Review

This rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. No comments were received regarding the economic impact of this rule. A final regulatory flexibility analysis is not required, and none was prepared.

Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Section 4–4, Subsistence Consumption of Fish and Wildlife

Section 4–4 of Executive Order 12898 requires Federal agencies to protect populations who consume fish and wildlife as part of their subsistence lifestyle, and to communicate to the public the potential health risks (from contaminants) involved as a result of eating fish and wildlife. NMFS has monitored and evaluated contaminant loads in all populations of beluga whales in Alaska for nearly a decade and has reported this information to the Alaska Department of Health and Social Service and to Alaska Native communities as this information becomes available.

Consultation with State and Local Government Agencies

In keeping with the intent of Executive Order 13132 to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, NMFS has conferred with state and local government agencies in the course of assessing the status of CI beluga whales. State and local governments support the conservation of this stock of beluga whales. NMFS has convened scientific workshops that were open to the public and has routinely exchanged information on the status of these whales with state and local agencies, and tribal governments.

Executive Order 13084–Consultation and Coordination with Indian Tribal Governments

This final rule is consistent with policies and guidance established in Executive Order 13084 of May 14, 1998, (63 FR 27655) and the Presidential Memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (Presidential Memorandum). Executive Order 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments, or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. The Presidential Memorandum requires that NMFS consult with tribal governments prior to taking actions that affect them and assess the impact of programs on tribal trust resources. Consistent with this Executive Order and the Presidential Memorandum, NMFS has taken several steps to consult and inform affected tribal governments and solicit their input during development of this rule, including the development of a co-management agreement with the Cook Inlet Marine Mammal Council in 2000–2003. This final rule does not impose substantial direct compliance costs on the communities of Indian tribal governments.

Consultation under the MMPA

The MMC and ANOs were consulted prior to publication of the harvest regulation proposal, and they were parties to the proceedings. The MMC

and three ANOs filed briefs with Judge McKenna and will participate on the scientific review committee.

List of Subjects in 50 CFR part 216

Administrative practice and procedure, Exports, Imports, Marine mammals, Transportation.

Dated: March 31, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361, *et seq.*, unless otherwise noted.

■ 2. In § 216.23, add paragraph (f) to read as follows:

§ 216.23 Native exceptions.

* * * * *

(f) *Harvest management of Cook Inlet beluga whales.* (1) *Cooperative management of subsistence harvest.* Subject to the provisions of 16 U.S.C. 1371(b) and any further limitations set forth in § 216.23, any taking of a Cook Inlet beluga whale by an Alaska Native must be authorized under an agreement for the co-management of subsistence uses (hereinafter in this paragraph "co-management agreement") between the National Marine Fisheries Service and an Alaska Native organization(s).

(2) *Limitations.* (i) *Sale of Cook Inlet beluga whale parts and products.* Authentic Native articles of handicraft and clothing made from nonedible by-products of beluga whales taken in accordance with the provisions of this paragraph may be sold in interstate commerce. The sale of any other part or product, including food stuffs, from Cook Inlet beluga whales is prohibited, provided that nothing herein shall be interpreted to prohibit or restrict customary and traditional subsistence practices of barter and sharing of Cook Inlet beluga parts and products.

(ii) *Beluga whale calves or adults with calves.* The taking of a calf or an adult whale accompanied by a calf is prohibited.

(iii) *Season.* All takings of beluga whales authorized under § 216.23(f) shall occur no earlier than July 1 of each year.

(iv) *Taking during 2001–2004.* The harvest of Cook Inlet beluga whales is restricted during the four-year period of 2001–2004 as follows:

(A) *Strike limitations.* Subject to the suspension provision of subparagraph (C), a total of six (6) strikes, which could result in up to six landings, are to be allocated through co-management agreement(s).

(B) *Strike allocations.* Four strikes, not to exceed one per year, are allocated to the Native Village of Tyonek. The remaining two strikes will be allocated over the 4–year period through co-management agreement with other Cook Inlet community hunters, with no more than one such strike being allocated during every other year.

(C) *Emergency provisions.* Takings of beluga whales authorized under § 216.23 will be suspended whenever unusual mortalities exceed six (6) whales in any year. "Unusual mortalities" include all documented human-caused mortality (including illegal takings and net entanglements but excluding all legally harvested whales) and all documented mortality resulting from unknown or natural causes that occur above normal levels, considered for the purposes of this provision to be twelve beluga whales per year. The level of unusual mortalities shall be calculated by documenting mortality for the calendar year and subtracting twelve. The sum of this result and the carry over of unusual mortality from any previous year from which the population has not recovered is the level of unusual mortalities for the current year. If in any year the number of unusual mortalities exceeds six whales, no strikes will be allowed in that year or in subsequent years until the population has recovered from those mortalities through foregone future harvests and natural recruitment.

(v) *Taking during 2005 and subsequent years.* [Reserved]

[FR Doc. 04–7660 Filed 4–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 031126296–4100–02; I.D. 111903B]

RIN 0648–AQ84

Fisheries of the Northeastern United States; Atlantic Herring Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final 2004 specifications for the Atlantic herring fishery.

SUMMARY: NMFS announces final specifications for the 2004 Atlantic herring fishery. The intent of this action is to conserve and manage the Atlantic herring resource and provide for a sustainable fishery.

DATES: Effective May 6, 2004, through December 31, 2004.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Final Regulatory Flexibility Analysis (EA/RIR/FRFA), Essential Fish Habitat Assessment, and the Stock Assessment and Fishery Evaluation (SAFE) Report for the 2001 Atlantic Herring Fishing Year are available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.nmfs.gov/ro/doc/nero.html.*

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, (978) 281–9259, e-mail at *eric.dolin@noaa.gov*, fax at (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) require the New England Fishery Management Council (Council) to recommend the following specifications annually: Allowable biological catch (ABC), optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and reserve (if any). The Council also recommends the total allowable catch (TAC) for each management area and subarea identified in the FMP. Details about the process through which the Council developed its recommendations were provided in the preamble of the proposed rule, and is not repeated here.

Proposed 2004 initial specifications were published on December 12, 2003 (68 FR 69373). Public comments were accepted through January 12, 2004. The final specifications are unchanged from those that were proposed.

2004 Final Initial Specifications

The following table contains the final specifications for the 2004 Atlantic herring fishery.

SPECIFICATIONS AND AREA TACS FOR THE 2004 ATLANTIC HERRING FISHERY

Specification	Proposed Allocation (mt)
ABC	300,000
OY	250,000
DAH	250,000
DAP	226,000
JVPt	20,000
JVP	10,000 (Area 2 and 3 only)
IWP	10,000
USAP	20,000 (Area 2 and 3 only)
BT	4,000
TALFF	0
Reserve	0
TAC Area 1A	60,000 (January 1 - May 31, landings cannot exceed 6,000)
TAC - Area 1B	10,000
TAC - Area 2	50,000 (TAC reserve: 70,000)
TAC - Area 3	60,000

Comments and Responses

One comment was received from a company that owns herring boats and a processing plant. Another comment came from an environmental group with an interest in the fishery. A third comment, which was very similar to that made by the environmental group, came from a fishermen's association.

Comment 1: The company said that it does not support any allocation to the JVPt, particularly for fish caught in Area 3. The company conceded that Area 2 might be able to support a JVP allocation at certain times of the year.

Response: The JVPt allocation for 2004 should not have a negative impact on domestic operations because the allocation is relatively limited. In recent years the allocation of JVPt has not been fully utilized. In 2003 there was no JVP harvest and only 182 mt of IWP. JVPt offers a potential economic opportunity for the domestic fleet. If the full amount of the JVP (10,000 mt) were harvested, revenues to the participating U.S. vessels would approximate $1.4 million, based on an average price of $143/mt.

Comment 2: Two comments concerned observer coverage and bycatch. The environmental group noted that, during the scoping process for Amendment 1, questions were raised about the adequacy of current observer coverage in the herring fishery and the related estimates of bycatch. The group argued that National Standard 9 requires all conservation measures, including annual specifications, to minimize bycatch to the extent practicable, and to the extent that bycatch cannot be avoided, minimize the mortality of incidentally caught species. The environmental group urged NMFS to immediately obtain an accurate and precise estimate of bycatch in the herring industry, and they stated that recent science suggests that 50–percent observer coverage on herring vessels might be the proper amount. The group questioned the legality of NMFS promulgating specifications without adequate observer coverage. Similarly, the fishermen's association argued that observer coverage has not been adequate in the herring fishery, and that current coverage levels are not sufficient to assess the bycatch associated with the trawl fleet.

Response: Observer coverage and bycatch are important issues to be considered in relation to the herring fishery. However, current information does not suggest that bycatch is a significant problem in the herring fishery. There are occasionally relatively small catches of groundfish or sportfish, but, overall, the herring fishery appears to be relatively clean. In 1997, the State of Maine contracted for 50 observed trips in the purse seine and mid-water trawl herring fishery. During these trips the bycatch was minimal, consisting primarily of mackerel, river herring, spiny dogfish and silver hake, as well as very small amounts of groundfish such as cod and white hake. In an effort to add to the data on bycatch in the fishery, NMFS recently placed observers on herring pair-trawlers in the Gulf of Maine. From the beginning of October 2003 through the middle of December 2003, a total of 22 trips were observed. The data generated during these trips are very similar to that generated on the trips observed under the Maine contract. NMFS notes that both of these issues--bycatch and observer coverage in the herring fishery--will be fully evaluated during the development of Amendment 1 to the FMP.

NMFS disagrees that these specifications are inconsistent with National Standard 9, based on best available data concerning bycatch as described above. Further, these data do not suggest that a 50–percent level of observer coverage is necessary to assess bycatch adequately.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA) prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the discussion that follows, the comments and responses to the proposed rule, and the IRFA and other analyses completed in support of this action. A copy of the IRFA is available from the Regional Administrator (see **ADDRESSES**).

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed rule and is not repeated here.

Summary of Significant Issues Raised in Public Comments

Three sets of comments were submitted on the proposed rule, but none were specific to the IRFA. However, one comment addressed potential economic impacts of an allocation of JVPt, and is addressed in the response to comment 1.

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

All of the affected businesses (fishing vessels) are considered small entities under the standards described in NMFS guidelines because they have gross receipts that do not exceed $3.5 million annually. There were 140 vessels that landed herring in 2002, 37 of which averaged more than 2,000 lb (907 kg) of herring per trip.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Minimizing Significant Economic Impacts on Small Entities

The annual setting of the specifications is a relatively limited process that focuses on the allocation of herring to various groups and for various purposes. The limited nature of this process, in turn, necessarily limits the alternatives available for minimizing significant economic impacts on small entities. Alternatives that were considered to lessen the impacts on small entities are summarized below.

One group of alternatives considered for the Atlantic herring fishery would have significantly increased the OY. For the 2003 specifications, the Council considered non-preferred OY alternatives of 300,000 and ≤1,000,000 mt. At these OY levels there would be increased potential revenues in comparison to the selected 2004 OY alternative of 250,000 mt. However, the Council determined that setting OY at

the ABC (300,00 mt) or above may have adverse impacts on the herring stock. Therefore, the Council decided that these greater OY options would pose an unacceptable level of risk to the sustainability of the herring stock.

Another alternative considered involves DAP. Based on the proposed 2004 DAP specification of 226,000 mt, there could be an increase of up to 134,169 mt in herring landings, or $19,186,167 in revenue based on $143/mt. Revenues to the fleet may also increase under the Council's non-preferred 2003 DAP alternative of 236,000 mt. However, the magnitude of economic impact of the DAP would depend on the processing sector's ability to expand markets and increase capacity to handle larger amounts of herring in 2004. Given the current capacity of the processing sector, the Council concluded that setting the DAP at 226,000 mt would provide sufficient allocation for expansion of the U.S. domestic processing sector and that setting the DAP at 236,000 mt was unlikely to result in additional expansion.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules, for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of permits issued for the Atlantic herring fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and may be found at the following web site: *http://www.nmfs.gov/ro/doc/nero.html.*

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 30, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 04–7661 Filed 4–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 032904B]

Fisheries of the Exclusive Economic Zone Off Alaska; Rock Sole in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for rock sole in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2004 total allowable catch (TAC) of rock sole in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 1, 2004, until 2400 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 TAC specified for rock sole in the BSAI is 34,850 metric tons (mt) as established by the 2004 harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 TAC specified for rock sole will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 31,850 mt, and is setting aside the remaining 3,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for rock sole in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure of rock sole fishery in the BSAI.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 30, 2004.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–7648 Filed 3–31–04; 3:50 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 033104A]

Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the B season allocation of the 2004 total allowable catch (TAC) of Pacific cod specified for catcher vessels using trawl gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 4, 2004, until 1200 hrs, A.l.t., June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 final harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004), established the Pacific cod TAC allocated to catcher vessels using trawl gear in the BSAI for the period 1200 hrs, A.l.t., April 1, 2004, through 1200 hrs, A.l.t., June 10, 2004, as 4,684 metric tons. See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A) and (B).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the B season allocation of the 2004 Pacific cod TAC specified for catcher vessels using trawl gear in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,650 mt, and is setting aside the remaining 34 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure the B season allocation of Pacific cod specified for catcher vessels using trawl gear in the BSAI.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–7813 Filed 4–1–04; 3:10 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 66
Tuesday, April 6, 2004

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 330

[Docket No. 02–011–3]

Redelivery of Cargo for Inspection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule that would have allowed inspectors from the Animal and Plant Health Inspection Service (APHIS) to require that cargo be returned to the port of first arrival or, if convenient, another location as specified by APHIS for inspection when necessary. The proposed rule was intended to simplify the inspection process by allowing APHIS inspectors to deal directly with owners, shippers, brokers, and their agents rather than having to request that the U.S. Customs Service act on APHIS' behalf and order the cargo returned to the port for inspection. We are taking this action after consulting with the Department of Homeland Security and determining that the incorporation of both Customs and APHIS port inspectors into that department has made the proposed change in the regulations unnecessary.

FOR FURTHER INFORMATION CONTACT: Ms. Jane E. Levy, Senior Staff Officer, Quarantine Policy Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8259.

SUPPLEMENTARY INFORMATION:

Background

On June 20, 2002, we published in the **Federal Register** (67 FR 41868–41869, Docket No. 02–011–1) a proposal to amend the regulations pertaining to the inspection of cargo entering the United States to provide that inspectors from the Animal and Plant Health Inspection Service (APHIS) could require that cargo be returned to the port of first arrival or, if convenient, another location as specified by APHIS for inspection when necessary. The proposed rule was intended to simplify the inspection process by allowing APHIS inspectors to deal directly with owners, shippers, brokers, and their agents, rather than having to request that the U.S. Customs Service act on APHIS' behalf and order the cargo returned to the port for inspection.

We solicited comments for 60 days ending August 19, 2002. We received three comments by that date. On August 27, 2002, we published in the **Federal Register** (67 FR 54976, Docket No. 02–011–2) a notice that we were reopening the comment period for the proposed rule until September 16, 2002. We did not receive any additional comments by that date.

After consultation with the Department of Homeland Security (DHS), we have determined that proceeding with a final rule is unnecessary since both Customs and APHIS port inspectors have been incorporated into the Border and Transportation Security Division of DHS. Therefore, we are withdrawing the June 20, 2002, proposed rule.

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 31st day of March, 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–7739 Filed 4–5–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–79–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes. This proposal would require repetitive inspections for cracks or evidence of damage/distortion of the anti-skid drive coupling clips for the hubcaps of the main landing gear (MLG) wheels; repetitive measurement of the gap and height dimensions of the coupling clips; corrective actions, if necessary; and eventual replacement of all coupling clips with new, improved coupling clips. This action is necessary to prevent excessive gaps in the anti-skid drive coupling clips for the hubcaps of the MLG, which could result in momentary loss of the normal braking system at low speeds, and reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 6, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–79–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-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–79–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule 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 FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA,

Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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 proposed 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 proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–79–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–120 series airplanes. The DAC advises that it received reports of momentary loss of normal braking during low speed taxiing. In two of the reported incidents there was a complete loss of normal braking in all four main landing gear (MLG) wheels. Investigation revealed an excessive gap in the anti-skid drive coupling clips for the hubcaps of the inboard and outboard MLG wheels. These excessive gaps may impair the proper coupling of the clips with the anti-skid wheel speed transducer shaft, causing a temporary loss of normal braking in all four main wheels. This condition, if not corrected, could result in momentary loss of the normal braking system at low speeds and reduced controllability of the airplane.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 120–32–0088, Revision 01, dated October 1, 2003, which describes procedures for the following actions:

- A visual inspection for cracks, damage, distortion or broken-off pieces of the anti-skid drive coupling clips for the hubcaps of the inboard and MLG wheels.
- Measurement of the "G" (gap) and "H" (height) dimensions of the coupling clips to ensure they are within the tolerances specified in Figure 1 of the service bulletin; and repetitive measurement of dimension "G" at every wheel or transducer change.
- For certain airplanes, a one-time re-inspection of the anti-skid drive coupling clips for the affected MLG wheel hubcap at the next MLG wheel change, per Part II of the service bulletin.

The service bulletin also describes procedures for the following corrective actions:

- Replacement of any coupling clip having evidence of cracks, damage, distortion, or broken-off pieces; or having a measurement of dimension "H" that is outside the specified tolerance; with a new, improved part.
- Adjustment of any clip with dimension "G" outside the specified tolerance.
- Replacement of any clip where dimension "G" cannot be adjusted to the specified tolerance.
- Eventual replacement of all coupling clips with new, improved clips at the next C-check.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2003–01–01, dated February 6, 2003, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is 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, the DAC has kept us informed of the situation described above. We have examined the findings of the DAC, 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 Proposed AD

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, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between the Brazilian Airworthiness Directive, the Service Bulletin, and the Proposed AD

Paragraph (c) of the Brazilian airworthiness directive recommends that no later than March 30, 2003, the installation procedures for the MLG be revised to include a mandatory visual inspection for cracks, evident damage, distortion or broken-off pieces, of the anti-skid drive coupling clips for the MLG wheel hubcap; and a complete clip dimensional verification including the gap and the height. This proposed AD does not include a requirement to revise the installation procedures for the MLG wheels. However, paragraph (a) of this proposed AD does require repetitive general visual inspections and repetitive measurements of dimensions "G" and "H" of the anti-skid drive coupling at every wheel change or wheel speed transducer change.

The service bulletin states that if the measurement of dimension "G" of any anti-skid drive coupling clip is out of the tolerance specified in the service bulletin, and the clip can be adjusted to the specified tolerance, one re-inspection is necessary at the next MLG wheel change per Part II of the service bulletin. The service bulletin also contains a note stating that dimension "G" should be checked at every wheel or transducer change. This proposed AD does not include such a requirement;

however, as previously mentioned, paragraph (a) of this proposed AD does require repetitive measurements of dimensions "G" and "H" of the anti-skid drive coupling at every wheel change or wheel speed transducer change.

Clarification of Inspection Terminology

The service bulletin specifies a visual inspection of the MLG wheel hubcap clips for cracks, evident damage, distortion, or broken-off pieces. This proposed AD requires a general visual inspection. A note has been added to define that inspection.

Cost Impact

We estimate that 220 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to do the proposed general visual inspection and measurement of dimensions "G" and "H", at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed actions on U.S. operators is estimated to be $28,600, or $130 per airplane, per inspection cycle.

It would take approximately 1 work hour per airplane to do the proposed replacement of the coupling clips, at an average labor rate of $65 per work hour. Required parts would cost approximately $600 per airplane. Based on these figures, the cost impact of the proposed action on U.S. operators is estimated to be $146,300, or $665 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed 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 proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed 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) if promulgated, 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 copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2003–NM–79–AD.

Applicability: Model EMB–120 series airplanes having serial numbers 120003, 120004, and 120006 through 120359 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive gaps in the anti-skid drive coupling clips for the hubcaps of the main landing gear (MLG), which could result in momentary loss of the normal braking system at low speeds, and reduced controllability of the airplane, accomplish the following:

General Visual Inspection, Measurement of Clip Dimensions, and Corrective Actions

(a) Within 400 flight hours or 6 months after the effective date of this AD, whichever occurs first: Do a general visual inspection for cracks or evidence of damage/distortion of the anti-skid drive coupling clips for the MLG wheel hubcap; and measure the "G" (gap) and "H" (height) dimensions of the coupling clips; and do any applicable corrective action; per the Accomplishment Instructions of EMBRAER Service Bulletin 120–32–0088, Revision 01, dated October 1, 2003. Any applicable corrective action must be done prior to further flight per the service bulletin. Repeat the inspection and dimension measurement thereafter at every wheel change or wheel speed transducer change.

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."

Replacement of Coupling Clips

(b) Within 800 flight hours or 12 months after the effective date of this AD, whichever occurs first: Replace any anti-skid drive coupling clip for the MLG wheel hubcap that was not previously replaced per paragraph (a) of this AD, with a new, improved part specified in and per Part III of EMBRAER Service Bulletin 120–32–0088, Revision 01, dated October 1, 2003. Repeat the applicable actions required by paragraph (a) of this AD thereafter at every wheel change or wheel speed transducer change.

Parts Installation

(c) As of the effective date of this AD, no person may install an anti-skid drive coupling clip, part number 40–91115, on any airplane, unless the part number is identified as 40–91115 REV. D.

Credit for Actions Done per Previous Issue of Service Bulletin

(d) Accomplishment of the specified actions before the effective date of this AD per EMBRAER Service Bulletin 120–32–0088; dated November 18, 2002, is considered acceptable for compliance with the applicable requirements of paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

(e) 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:

Note 2: The subject of this AD is addressed in Brazilian airworthiness directive 2003–01–01, dated February 6, 2003.

Issued in Renton, Washington, on March 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7713 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–233–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, that currently requires installation of protective tape on the fire and overheat control unit located in the flight compartment. This action would continue to require the installation of protective tape and would add repetitive inspections of the condition of the protective tape and related corrective action. This action also would mandate eventual replacement of the existing fire and overheat control unit with a modified unit, which would end the repetitive inspections. Additionally, this action would add airplanes to the applicability in the existing AD. The actions specified by the proposed AD are intended to prevent fluid contamination inside the fire and overheat control unit, which could result in a false fire alarm and consequent emergency landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 6, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–233–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-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–233–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule 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, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York; telephone (516) 228–7300; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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 proposed 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 proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–233–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–233–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 9, 2003, the FAA issued AD 2003–14–17, amendment 39–13236 (68 FR 42580, July 18, 2003), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, to require the installation of protective tape on the fire and overheat control unit located in the flight compartment. That action was prompted by reports of two cases of multiple false fire alarms in flight. The requirements of that AD are intended to prevent fluid contamination inside the fire and overheat control unit, which could result in a false fire alarm and consequent emergency landing.

Actions Since Issuance of Previous Rule

Since the preparation of AD 2003–14–17, Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has issued Canadian airworthiness directive CF–2000–35R1, dated July 2, 2003. The revised Canadian airworthiness directive mandates replacement of the fire and overheat control unit in the flight compartment with a modified unit, which is a permanent solution to prevent the fluid contamination that can occur inside the existing unit.

Explanation of New Service Information

Bombardier has issued Alert Service Bulletin A601R–26–017, Revision "D," dated November 6, 2003 (Revision "A" of the service bulletin was referenced in the existing AD for accomplishment of the installation of the protective tape). Revision "D" of the service bulletin adds airplanes to the effectivity in the service bulletin. Revision "D" also adds an inspection of the protective tape for damage. The inspection includes cleaning the tape and the top area of the overheat control unit, making sure that liquid is prevented from entering the unit at the fastener and hinge positions where tape is installed, and replacing damaged tape with new tape.

Bombardier also has issued Service Bulletin 601R–26–018, Revision "A," dated February 27, 2003, which describes procedures for replacement of

fire and overheat control units having part number (P/N) 472597–01, with modified units having P/N 472597–02. Such replacement eliminates the need for the repetitive inspections. The service bulletin also describes procedures for an operational test after the modified unit is installed. The service bulletin references Kidde Aerospace Service Bulletin 472597–01–26–431, dated August 28, 2001, as an additional source of service information for accomplishment of the modification.

Although the Bombardier service bulletins describe procedures for completing a reporting sheet, this proposed AD would not require those actions.

TCCA classified the Bombardier service bulletins as mandatory and issued Canadian airworthiness directive CF–2000–35R1, dated July 2, 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 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 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 Proposed 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, the proposed AD would supersede AD 2003–14–17 to continue to require installation of protective tape on the fire and overheat control unit located in the flight compartment. In addition, the proposed AD would add repetitive inspections of the protective tape for damage, and related corrective action. The proposed AD also would mandate eventual replacement of the existing fire and overheat control unit with a modified unit. Additionally, the proposed AD would add airplanes on which the specified change was not incorporated during production to the applicability in the existing AD. The actions would be required to be accomplished in accordance with the Bombardier service bulletins described previously, except as discussed below.

Clarification of Compliance Time

The Canadian airworthiness directive requires doing the inspection of the condition of the protective tape "within 5,000 hours air time or at the next C-check after compliance with Part 1 of the directive, whichever occurs later." The Canadian airworthiness directive requires repeating that inspection "every 5,000 hours air time or at the next C-check, whichever occurs later." Because "C-check" schedules vary among operators, this proposed AD would require accomplishment of the initial inspection within 5,000 flight hours or 24 months after the effective date of the AD, whichever is later. The inspection is to be repeated at intervals not to exceed 5,000 flight hours or 24 months, whichever is later. We find that a grace period of 24 months is within an interval of time that parallels normal scheduled maintenance for most affected operators and is appropriate for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with TCCA.

Clarification of Inspection

Service Bulletin A601R–26–017, Revision D, specifies an "inspection" of the protective tape, but we have clarified the inspection requirement contained in the proposed AD as a general visual inspection. Additionally, a note has been added to define that inspection.

Work Hour Rate Increase

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are about 240 airplanes of U.S. registry that would be affected by this proposed AD.

The installation of protective tape that is currently required by AD 2003–14–17 takes about 1 work hour per airplane to do, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $65 per airplane.

The new inspection that is proposed in this AD action would take about 1 work hour per airplane to do, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $15,600, or $65 per airplane, per inspection cycle.

The replacement that is proposed in this AD action would take about 2 work hours per airplane to do, at an average labor rate of $65 per work hour. Parts cost would be minimal. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $31,200, or $130 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed 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 proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed 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) if promulgated, 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 copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 39–13236 (68 FR 42580, July 18, 2003), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly Canadair): Docket 2003–NM–233–AD. Supersedes AD 2003–14–17, Amendment 39–13236.

Applicability: Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes; certificated in any category; as listed in Bombardier Alert Service Bulletin A601R–26–017, Revision 'D,' dated November 6, 2003; and Bombardier Service Bulletin 601R–26–018, Revision 'A,' dated February 27, 2003.

Compliance: Required as indicated, unless accomplished previously.

To prevent fluid contamination inside the fire and overheat control unit in the flight compartment, which could result in a false fire alarm and consequent emergency landing, accomplish the following:

Restatement of Requirements of AD 2003–14–17

Installation of Protective Tape

(a) For airplanes listed in Bombardier Alert Service Bulletin A601R–26–017, Revision 'A,' dated September 8, 2000: Within 250 flight hours or 30 days after August 22, 2003 (the effective date of AD 2003–14–17, amendment 39–13236), whichever occurs first, install protective tape on the external cover of the fire and overheat control unit located in the flight compartment per the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–26–017, Revision 'A,' dated September 8, 2000; or Revision 'D,' dated November 6, 2003.

(b) Installation of protective tape on the external cover of the fire and overheat control in the flight compartment, done before the effective date of this AD, per Bombardier Alert Service Bulletin A601R–26–017, dated August 4, 2000; or Revision 'B,' dated February 6, 2003; is acceptable for compliance with the requirements of paragraphs (a) and (c) of this AD.

New Requirements of This AD

Installation of Protective Tape

(c) For airplanes listed in Bombardier Alert Service Bulletin A601R–26–017, Revision 'D,' dated November 6, 2003; and Bombardier Service Bulletin 601R–26–018, Revision 'A,' dated February 27, 2003; on which the requirements specified in paragraph (a) of this AD have not been done as of the effective date of this AD: Within 250 flight hours or 30 days after the effective date of this AD, whichever occurs first, install protective tape on the external cover of the fire and overheat control unit located in the flight compartment per the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–26–017, Revision 'D,' dated November 6, 2003. Accomplishment of this paragraph terminates the requirements of paragraph (a) of this AD.

Repetitive Inspections/Corrective Action

(d) Within 5,000 flight hours or 24 months after the effective date of this AD: Do a general visual inspection to determine the condition of the protective tape on the external cover of the fire and overheat control unit, per the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–26–017, Revision 'D,' dated November 6, 2003.

(1) If the protective tape is not damaged and provides an adequate seal to prevent entry of liquid at the fastener and hinge positions of the unit: Repeat the inspection thereafter at intervals not to exceed 5,000 flight hours or 24 months, whichever is later.

(2) If the protective tape is damaged or does not provide an adequate seal to prevent entry of liquid at the fastener and hinge positions of the unit: Before further flight, replace the protective tape with new tape per the service bulletin. Repeat the inspection thereafter at intervals not to exceed 5,000 flight hours or 24 months, whichever is later.

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."

Replacement

(e) Within 20,000 flight hours or 84 months after the effective date of this AD, whichever is first: Replace the fire and overheat control unit with a modified unit, per the Accomplishment Instructions of Bombardier Service Bulletin 601R–26–018, Revision 'A,' dated February 27, 2003. Accomplishment of the replacement terminates the repetitive inspections required by paragraph (d) of this AD.

No Reporting Required

(f) Where Bombardier Alert Service Bulletin A601R–26–017, Revision 'D,' dated November 6, 2003; and Bombardier Service Bulletin 601R–26–018, Revision 'A,' dated February 27, 2003; describe procedures for completing a reporting sheet, this AD does not require that action.

Part Installation

(g) As of the effective date of this AD, no person may install a fire and overheat control unit, part number 472597–01, on any airplane, unless the unit has been modified per paragraph (e) of this AD.

Alternative Methods of Compliance

(h) 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.

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–35R1, dated July 2, 2003.

Issued in Renton, Washington, on March 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7712 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–65–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes. This proposal would require a one-time inspection of the access door ramp of the fueling control panel for damage or deformation, and applicable corrective actions. This action is necessary to prevent inadvertent fuel transfer in flight due to fuel service personnel not repositioning the defuel valve switch control to the closed position after utilization on the ground, which could cause in-flight fuel starvation. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 6, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–65–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-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–65–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule 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 FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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 proposed 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 proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–65–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–120 series airplanes. The DAC advises that it has received reports of inadvertent fuel transfer in flight. Investigation revealed that damage to the ramp on the access door of the fueling control panel may occur if the access door is closed with the defuel valve switch control set to the open position. This condition, if not corrected, could result in inadvertent fuel transfer in flight due to fuel service personnel not repositioning the defuel valve switch control to the closed position after utilization of the switch control on the ground, which could cause in-flight fuel starvation.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 120–57–0038, dated June 26, 2002, which describes procedures for a one-time inspection of the access door ramp of the fueling control panel for damage or deformation; and applicable corrective actions. The corrective actions include reinforcement of the access door, and replacement of any damaged ramp with a new ramp; as well as modification of the access door by installation of a ramp in cases where no ramp is present. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2002–12–02, effective January 6, 2003, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is 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, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, 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 Proposed 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, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 220 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish each proposed action, and that the average labor rate is $65 per work hour. Required parts would cost approximately $200 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $101,200, or $460 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed 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 proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed 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) if promulgated, 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 copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2003–NM–65–AD.

Applicability: Model EMB–120 series airplanes, serial numbers 120003, 120004, and 120006 through 120358 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent fuel transfer in flight due to fuel service personnel not repositioning the defuel valve switch control to the closed position after utilization on the ground, which could cause in-flight fuel starvation, accomplish the following:

Inspection of Existing Ramp and Corrective Actions

(a) For airplanes that have a ramp on the access door of the fueling control panel: Within 1,200 flight hours or 8 months from the effective date of this AD, whichever occurs first, perform a general visual inspection of the access door ramp for damage or deformation; and do all applicable corrective actions by accomplishing all the actions in accordance with paragraph 2.2.3 of the Accomplishment Instructions of EMBRAER Service Bulletin 120–57–0038, dated June 26, 2002. Do the actions per the service bulletin. Accomplish any applicable corrective actions before further flight.

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."

Modification

(b) For airplanes that do not have a ramp on the access door of the fueling control panel: Within 1,200 flight hours or 8 months from the effective date of this AD, whichever occurs first, modify the access door by accomplishing all the actions in paragraph 2.1.3 of the Accomplishment Instructions of EMBRAER Service Bulletin 120–57–0038, dated June 26, 2002. Do the actions per the service bulletin. Accomplish any applicable corrective actions before further flight.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in Brazilian airworthiness directive 2002–12–02, effective January 6, 2003.

Issued in Renton, Washington, on March 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7711 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–96–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes. This proposal would require installing three new vertical cargo nets in cargo-configured cabins. This action is necessary to prevent significant movement of cargo during operation, which could result in loss of control of the airplane or injury to the flightcrew. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 6, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–96–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-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–96–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule 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 FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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 proposed 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 proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–96–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–96–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–120 series airplanes that have cargo-configured cabins. The DAC advises that load displacement is possible if the cargo is not properly distributed and retained along the cargo compartment. This condition, if not corrected, could result in significant movement of the cargo during operation, which could cause loss of control of the airplane or injury to the flightcrew.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 120–25–0255, dated March 5, 2002, and Service Bulletin 120–25–0257, dated April 30, 2002. These service bulletins describe procedures for installing three new vertical cargo nets in the cargo-configured cabins. The installation includes installing new complemental tracks; reworking certain floor panels and carpeting; installing new placards that define the new cargo limits; testing the cargo nets to ensure that they can be installed when the airplane is carrying cargo; and installing track covers to be used when the airplane is carrying passengers. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

The DAC classified these service bulletins as mandatory and issued Brazilian airworthiness directive 2001–02–02R1, dated April 22, 2003, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is 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, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, 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 Proposed 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, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously, except as discussed below.

Difference Between the Proposed AD and the Brazilian Airworthiness Directive

The Brazilian airworthiness directive references EMBRAER Service Bulletin 120–25–0254, dated January 29, 2001 (applicable to certain Model EMB–120ER series airplanes). The airplanes listed in this service bulletin are not of U.S. registry, and the action in this service bulletin will be part of the pre-certification requirements should these airplanes be imported into the U.S. Therefore, the installation of a placard that is described in this service bulletin, and referenced in Part I of the Brazilian airworthiness directive, would not be required by this proposed AD. However, this proposed AD would require the actions in Part II of the Brazilian airworthiness directive, at the compliance time listed under Part I of the Brazilian airworthiness directive. The Brazilian airworthiness directive gives no specific compliance time for the actions in Part II, but we find that a 30–day compliance time represents an appropriate interval for the affected airplanes to continue to operate without compromising safety.

Cost Impact

The FAA estimates that 153 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 5 work hours per airplane to accomplish the proposed installation. The average labor rate is $65 per work hour. Required parts would cost between $2,250 and $4,570, depending on the configuration of the airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $393,975 and $748,935, or between $2,575 and $4,895 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed 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.

Currently, there are no affected "CTA Version" airplanes on the U.S. Register (as listed in the applicability of EMBRAER Service Bulletin 120–25–0257, dated April 30, 2002). However, if an affected airplane is imported and placed on the U.S. Register in the future, the required actions would take about 9 work hours, at an average labor rate of $65 per work hour. Required parts would cost about $6,663 per airplane. Based on these figures, we estimate the cost of this AD to be $7,248 per airplane.

Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed 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) if

promulgated, 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 copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2003–NM–96–AD.

Applicability: Model EMB–120 series airplanes, as listed in EMBRAER Service Bulletin 120–25–0255, dated March 5, 2002; and EMBRAER Service bulletin 120–25–0257, dated April 30, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent significant movement of cargo during operations, which could result in loss of control of the airplane or injury to the flightcrew, accomplish the following:

Installation

(a) Within 30 days after the effective date of this AD: Install three new vertical cargo nets by doing all the actions in and per the Accomplishment Instructions of EMBRAER Service Bulletin 120–25–0255, dated March 5, 2002; or EMBRAER Service Bulletin 120–25–0257, dated April 30, 2002; as applicable.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in Brazilian airworthiness directive 2001–02–02R1, dated April 22, 2003.

Issued in Renton, Washington, on March 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7710 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–346–AD]

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: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes, that currently requires determining whether a defective auxiliary power unit (APU) exhaust silencer is installed on the airplane; and corrective actions if necessary. For certain airplanes, this action would require modification of the APU exhaust silencer, and reidentification of the part number for the APU exhaust silencer once the modification is accomplished. For certain other airplanes, this action would require repetitive inspections to determine the structural integrity of the APU exhaust silencer; corrective actions, if necessary; eventual modification of the APU exhaust silencer, which terminates the repetitive inspections; and reidentification of the part number for the APU exhaust silencer once the modification is accomplished. This action would also add airplanes to the applicability of the existing AD. The actions specified by the proposed AD are intended to prevent separation of the aft baffle assembly from the APU exhaust silencer and consequent separation of the assembly from the airplane, which could cause damage to other airplanes during takeoff and landing operations, or injury to people on the ground. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 6, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–346–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-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–346–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule 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 FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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 proposed 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 proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–346–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–346–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 1, 2002, the FAA issued AD 2002–16–06, amendment 39–12845 (67 FR 52398, August 12, 2002), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. That AD requires determining whether a defective auxiliary power unit (APU) exhaust silencer is installed on the airplane; and corrective actions, if necessary. That action was prompted by a report that the aft baffle assembly separated from the shell assembly of an APU exhaust silencer having part number 4503801B. The requirements of that AD are intended to prevent separation of the aft baffle assembly from the APU exhaust silencer and consequent separation of the assembly from the airplane, which could cause damage to other airplanes during takeoff and landing operations, or injury to people on the ground.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, issued a revised airworthiness directive which adds airplanes to the applicability of the existing Brazilian airworthiness directive, new repetitive inspections, and additional modifications; and allows up to two repetitive inspections before accomplishment of the modifications that terminate the repetitive inspections.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–49–0021, Change 03, dated September 12, 2003 (for Model EMB–135 and –145 series airplanes). For airplanes listed in the effectivity for Part I of the service bulletin, the procedures include a visual inspection of the APU exhaust silencer to determine if the aft baffle is flush with the end of the cylindrical portion, an inspection of the movement of the cylindrical portion of the APU exhaust silencer shell assembly, modification of the APU exhaust silencer assembly by spot-welding and installing bolts (including torquing the bolts) and a spacer, and reidentification of the modified APU exhaust silencer assembly with a new part number. For airplanes listed in the effectivity for Part II of the service bulletin, the procedures include modifying the APU exhaust silencer assembly by installing a spacer and bolts (including torquing the bolts), and reidentifying the modified APU exhaust silencer assembly with a new part number. Both Part I and Part II of the EMBRAER service bulletin request that operators submit a form notifying the manufacturer when the actions in the service bulletin have been accomplished.

Also, both Part I and Part II of the service bulletin reference Hamilton Sundstrand Service Bulletin SB–4503801–49–3, Revision 02, dated July 19, 2002, as an additional source of service information for inspection and modification of the APU exhaust silencer assembly. The Hamilton Sundstrand bulletin is incorporated into the EMBRAER service bulletin.

EMBRAER has also issued Service Bulletin 145LEG–49–0001, Change 01, dated August 29, 2002 (for Model EMB–135BJ series airplanes). This service bulletin describes procedures for inspecting the APU exhaust silencer assembly, modifying the APU exhaust silencer assembly by installing fasteners and a spacer, and reidentifying the modified APU exhaust silencer assembly with a new part number. The service bulletin requests that operators submit a form notifying the manufacturer when the actions in the service bulletin have been accomplished. The service bulletin references Hamilton Sundstrand Service Bulletin SB–4503801–49–3, Revision 02, dated July 19, 2002, as an additional source of service information for inspection and modification of the APU exhaust silencer assembly. The Hamilton Sundstrand service bulletin is incorporated into the EMBRAER service bulletin.

The DAC classified the EMBRAER service bulletins as mandatory and issued Brazilian airworthiness directive 2002–05–01R2, dated January 6, 2003, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

These airplane models are manufactured in Brazil 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, the DAC has kept us informed of the situation described above. We have examined the findings of the DAC, 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 Proposed AD

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, the proposed AD would supersede AD 2002–16–06. For certain airplanes, the proposed AD would require modification of the APU exhaust silencer, and reidentification of the part number for the APU exhaust silencer once the modification is accomplished. For certain other airplanes, the proposed AD would require repetitive inspections to determine the structural integrity of the APU exhaust silencer; corrective actions, if necessary; modification of the APU exhaust silencer, which terminates the repetitive inspections; and reidentification of the part number for the APU exhaust silencer once the modification is accomplished. The proposed AD would also add airplanes to the applicability of the existing AD. The actions would be required to be accomplished in accordance with the applicable service bulletin described previously, except as described below.

Differences Between the Proposed AD and Service Information

Although the Accomplishment Instructions of the service bulletins specify to report accomplishment of the service bulletins to the manufacturer, this proposed AD does not require that action.

Cost Impact

There are approximately 394 airplanes of U.S. registry that would be affected by this proposed AD.

The proposed repetitive inspections specified in Part I of EMBRAER Service Bulletin 145–49–0021, Change 03, dated September 12, 2003; and EMBRAER

Service Bulletin145LEG–49–0001, Change 01, dated August 29, 2002; would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed repetitive inspections on U.S. operators is estimated to be $65 per airplane, per inspection cycle.

The proposed modification, including the part number reidentification, specified in Part I of EMBRAER Service Bulletin 145–49–0021, Change 02; and EMBRAER Service Bulletin145LEG–49–0001, Change 01; would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts would be supplied by the part manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed modification is estimated to be $102,440, or $260 per airplane.

The proposed modification, including the part number reidentification, specified in Part II of EMBRAER Service Bulletin 145–49–0021, Change 03, would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed modification is estimated to be $65 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed 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 proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed 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) if promulgated, 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 copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 39–12845 (67 FR 52398, August 12, 2002), and by adding a new airworthiness directive (AD), to read as follows:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2002–NM–346–AD. Supersedes AD 2002–16–06, Amendment 39–12845.

Applicability: Model EMB–135BJ series airplanes, as listed in EMBRAER Service Bulletin 145LEG–49–0001, Change 01, dated August 29, 2002; and Model EMB–135 and –145 series airplanes, as listed in EMBRAER Service Bulletin 145–49–0021, Change 03, dated September 12, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the aft baffle assembly from the auxiliary power unit (APU) exhaust silencer and consequent separation of the assembly from the airplane, which could cause damage to other airplanes during takeoff and landing operations, or injury to people on the ground, accomplish the following:

Modification

(a) For airplanes that have incorporated EMBRAER Alert Service Bulletin 145–49–A021, Change 01, dated May 13, 2003: Within 1,500 flight hours after the effective date of this AD; install a spacer and bolts (including torquing the bolts) in the APU exhaust silencer assembly per the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–49–0001, Change 01, dated August 29, 2002, (for Model EMB–135BJ series airplanes); or Part II of the Accomplishment Instructions of EMBRAER Service Bulletin 145–49–0021, Change 03, dated September 12, 2003, (for Model EMB –135 and –145 series airplanes); as applicable.

Reidentification of Modified Part

(b) For airplanes that have incorporated EMBRAER Alert Service Bulletin 145–49–A021, Change 01, dated May 13, 2003: After accomplishment of the modification required by paragraph (a) of this AD; before further flight, change the part number of the modified APU exhaust silencer assembly from 4503801B to 4503801C per the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–49–0001, Change 01, dated August 29, 2002; or Part II of the Accomplishment Instructions of EMBRAER Service Bulletin 145–49–0021, Change 03, dated September 12, 2003; as applicable.

Inspections

(c) For airplanes that have not incorporated EMBRAER Alert Service Bulletin 145–49–A021, Change 01, dated May 13, 2003: Within 500 flight hours or 3 months after the effective date of this AD, whichever is first; do a one-time general visual inspection of the APU exhaust silencer to determine if the aft baffle is flush with the end of the cylindrical portion, and an inspection of the movement of the cylindrical portion of the APU exhaust silencer shell assembly, per the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–49–0001, Change 01, dated August 29, 2002; or Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 145–49–0021, Change 03, dated September 12, 2003; as applicable.

(1) If the APU exhaust silencer assembly passes the inspections: Do the actions in paragraph (d) of this AD.

(2) If the APU exhaust silencer assembly does not pass one or both inspections: Before further flight, secure or remove the affected parts from the silencer, and placard the APU as "Inoperative" per the Accomplishment Instructions of the applicable service bulletin. No further action is required unless the APU is reactivated. To reactivate the APU: Before further flight, do the actions required by paragraph (e) of this AD.

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

(d) For airplanes that have not incorporated EMBRAER Alert Service Bulletin 145–49–A021, Change 01, dated May 13, 2003: After doing the inspections required by paragraph (c) of this AD, before further flight; do a mechanical integrity

inspection of the APU exhaust silencer assembly per the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–49–0001, Change 01, dated August 29, 2002; or Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 145–49–0021, Change 03, dated September 12, 2003; as applicable.

(1) If the APU exhaust silencer assembly passes the inspection required by paragraph (d) of this AD: Do the same steps for the mechanical integrity inspection required by paragraph (d) of this AD in a counter-clockwise direction, per the Accomplishment Instructions of the applicable service bulletin. Repeat the inspections required by paragraphs (d) and (d)(1) of this AD thereafter at intervals not to exceed 500 flight hours or 3 months, whichever is first. The inspections may be repeated up to two times before accomplishment of the requirements of paragraph (e) of this AD.

(2) If the APU exhaust silencer assembly does not pass the inspection required by paragraph (d) of this AD: Before further flight, disassemble the APU exhaust silencer assembly or placard the APU as "Inoperative" per the Accomplishment Instructions of the applicable service bulletin. No further action is required unless the APU is reactivated. To reactivate the APU: Before further flight, do the actions required by paragraph (e) of this AD.

Modification/Terminating Action

(e) For airplanes that have not incorporated EMBRAER Alert Service Bulletin 145–49–A021, Change 01, dated May 13, 2003: Within 1,500 flight hours or 12 months after the effective date of this AD, whichever is first, except as provided by paragraphs (c)(2) and (d)(2) of this AD; do all of the applicable actions per the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–49–0001, Change 01, dated August 29, 2002; or Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 145–49–0021, Change 03, dated September 12, 2003; as applicable. This constitutes terminating action for the repetitive inspections required by paragraph (d) of this AD.

Reidentification of Modified Part

(f) For airplanes that have not incorporated EMBRAER Alert Service Bulletin 145–49–A021, Change 01, dated May 13, 2003: After accomplishment of the modification required by paragraph (e) of this AD; before further flight, change the part number of the modified APU exhaust silencer assembly from 4503801B to 4503801C per the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–49–0001, Change 01, dated August 29, 2002; or Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 145–49–0021, Change 03, dated September 12, 2003; as applicable.

Credit for Actions Previously Accomplished

(g) Accomplishment of the specified actions before the effective date of this AD per EMBRAER Service Bulletin 145–49–0021, Change 02, dated November 12, 2002, is considered acceptable for compliance with the applicable requirements of paragraphs (a), (b), (c), (d), (e), and (f) of this AD.

Parts Installation

(h) As of the effective date of this AD, no person may install on any airplane an APU exhaust silencer having P/N 4503801B.

Submission of Information Not Required

(i) Although the service bulletins referenced in this AD specify to submit information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(j) 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.

Note 2: The subject of this AD is addressed in Brazilian airworthiness directive 2002–05–01R2, dated January 6, 2003.

Issued in Renton, Washington, on March 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7709 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–12–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (Collectively Called A300–600), and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 and A310 series airplanes. This proposal would require modification of the attachment system of the insulation blankets of the forward cargo compartment and related corrective action. This action is necessary to prevent failure of the attachment system of the cargo insulation blankets, which could result in detachment and consequent tearing of the blankets. Such tearing could result in blanket pieces being ingested into and jamming the forward outflow valve of the pressure regulation subsystem, which could lead to cabin depressurization and adversely affect continued safe flight of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 6, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–12–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–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–12–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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 proposed 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 proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–12–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Model A300–600 and A310 series airplanes. The DGAC advises that there have been several reports of operator difficulty maintaining cabin pressure during cruise. Investigation revealed that pieces of a cargo insulation blanket had been ingested into the forward outflow valve of the pressure regulation subsystem located at frame 39 of the fuselage. Additional reports, obtained during routine inspections on other airplanes, revealed that the same type of cargo insulation blankets were found damaged. The damage was due to broken fasteners on the attachment system, which caused the blankets to detach and tear apart. Such conditions, if not corrected, could result in blanket pieces being ingested into and jamming the forward outflow valve of the pressure regulation subsystem, which could lead to cabin depressurization and adversely affect continued safe flight of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–21–6045 and A310–21–2059, both Revision 01, both dated May 22, 2002. The service bulletins describe procedures for modification of the attachment system of the insulation blankets of the forward cargo compartment and related corrective action. The modification includes the installation of insulation brackets on the attachment system, installation of adhesive on the insulation blanket, cutting the blanket and trimming the cutout sections, and re-identification of the blanket. The related corrective action involves repair of any damaged insulation blanket. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2002–626(B) R1, dated March 19, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France 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, the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC, 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 Proposed 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, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Difference Between Service Bulletin A310–21–2059, Revision 01, and Proposed AD

The service bulletin recommends prior or concurrent accomplishment of Airbus Service Bulletin A310–21–2012 (Airbus Modification 3881), Revision 03, dated April 9, 1986; however, we have been informed by the manufacturer that this is an inadvertent error. Therefore, this proposed AD follows the applicability in the French airworthiness directive and is applicable to A310 series airplanes on which Airbus Modification 3881 has already been done.

Cost Impact

We estimate that 149 airplanes of U.S. registry would be affected by this proposed AD, that it would take about 3 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $65 per work hour. Required parts would cost about $198 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $58,557, or $393 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed 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 proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed 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) if promulgated, 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 copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Airbus: Docket 2003–NM–12–AD.

Applicability: Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600), and A310 series airplanes; certificated in any category; on which Airbus Modification 12340 or 12556 has not been done; and A310 series airplanes on which Airbus Modification 3881 has been done.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the attachment system of the cargo insulation blankets, which could result in detachment and consequent tearing of the blankets, resulting in blanket pieces being ingested into and jamming the forward outflow valve of the pressure regulation subsystem, which could lead to cabin depressurization and adversely affect continued safe flight of the airplane, accomplish the following:

Modification

(a) Within 1 year after the effective date of this AD: Modify the attachment system of the insulation blankets of the forward cargo compartment by doing all the applicable actions per the Accomplishment Instructions of Airbus Service Bulletin A300–31–6045 (for Model A300–600 series airplanes) or A310–21–2059 (for Model A310 series airplanes), both Revision 01, both dated May 22, 2002, as applicable. Repair any damaged insulation blanket before further flight, per the applicable service bulletin.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–626(B) R1, dated March 19, 2003.

Issued in Renton, Washington, on March 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7708 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

RIN 3038–AC06

Foreign Futures and Foreign Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to amend Part 30 of the Commission's regulations to clarify when foreign futures and options brokers who are members of a foreign board of trade must register or obtain an exemption from registration. The Commission proposes to modify Rule 30.4(a) by clarifying that foreign futures and options brokers, including those with U.S. bank branches, are not required to register as futures commission merchants (FCMs) pursuant to Rule 30.4, or seek exemption from registration under Rule 30.10, if they fall generally into the following categories: Those that carry customer omnibus accounts for U.S. FCMs; those that carry U.S. affiliate accounts that are proprietary to the foreign futures and options broker; and those that carry U.S. accounts that are proprietary to a U.S. FCM. In addition, a foreign futures and options broker that has U.S. bank branches will be eligible for a Rule 30.10 comparability exemption or exemption from registration under Rule 30.4 based upon compliance with conditions specified in proposed Rule 30.10(b)(1) through (6).

DATES: Comments must be received by June 7, 2004.

ADDRESSES: You may submit comments, identified by RIN 3038–AC06, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: secretary@cftc.gov.* Include "Commission Rules 30.1, 30.4 and 30.10—Registration and Exemption" in the subject line of the message.
- *Fax:* (202) 418–5521.
- *Mail:* Send to Jean A. Webb, Secretary of the Commission, 1155 21st Street, NW., Washington DC 20581.
- *Courier:* See above.

Instructions: All comments received will be posted without change to *http://www.cftc.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Deputy Director, or Susan A. Elliott, Special Counsel, Compliance and Registration, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission. Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5439 or (202) 418–5464, or electronic mail: *lpatent@cftc.gov* or *selliott@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This is a reproposal of rules first proposed on August 26, 1999, [1] with two adjustments.[2] The 1999 proposals would have amended Part 30 of the Commission's rules to clarify when foreign futures and options brokers that are members of a foreign board of trade or affiliates of U.S. FCMs must register under the Act or obtain an exemption from registration under the Act. The comment period ended on October 25, 1999 without any comments received. Soon thereafter, a no-action request was submitted that touched upon some of the issues addressed by the proposal, to which the staff responded. The staff's no-action letter permitted the New York branch of a French bank to register in the U.S. as an Introducing Broker, to be guaranteed by a registered FCM that is a subsidiary of the same bank, and to introduce business to the London branch of the same bank. The letter stated that staff would not recommend enforcement action against the bank or its New York or London branches solely upon their failure to register as FCMs under the Act, or against the U.S. FCM or the bank's New York or London branches for failure of the New York branch to introduce all customer accounts to the guaranteeing U.S. FCM, as required by Rule 1.57(a)(1).[3]

The Commission initially postponed reproposal of these rule amendments in order to permit time to assess the impact of its no-action letter, which permitted

[1] 64 FR 46613 (August 26, 1999).

[2] The 1999 proposal required an applicant for a Rule 30.10 exemption with a U.S. bank branch to file a specified set of representations with the National Futures Association (NFA). This proposal instead lists the representatives as conditions for compliance, in order to reduce the paperwork necessitated by these rule amendments. The second change from the 1999 proposal is that the definitional changes proposed, adding "foreign futures and options customer omnibus account" and "foreign futures and options broker" ("FFOB"), were adopted as Rules 30.1(d) and (e), respectively, in connection with the adoption of Rule 30.12 (65 FR 47275, 47280, August 2, 2000). Rule 30.12 was proposed in a separate release issued simultaneously with the proposal of the changes discussed herein on August 26, 1999 (64 FR 46618).

[3] The text of the letter is published on the CFTC Web site as Letter 00–94, "Rules 30.10 and 30.4a: No-Action Relief in Connection with Registration as an Introducing Broker," and at [1999–2000 Transfer Binder] Comm. Fut. L. Rep. ¶28,279, September 27, 2000.

the U.S. branch of a foreign bank in a Part 30 jurisdiction to register as an IB in the U.S., notwithstanding the Rule 30.10 registration exemption of its parent company.[4] Reproposal was also deferred due to the passage of the Commodity Futures Modernization Act (CFMA) in December of 2000, and the concurrent necessity for substantial rulemakings to implement the mandate of that legislation.

Notwithstanding these developments, the Commission's Part 30 program continues to operate much as it did when adopted in 1987.[5] Part 30 governs, generally, the solicitation and sale of foreign futures[6] and foreign option[7] contracts to customers[8] located in the U.S. These rules were promulgated pursuant to Sections 2(a)(1)(A), 4(b) and 4c of the Act, which vest the Commission with exclusive jurisdiction over the offer and sale, in the U.S., of options and futures contracts traded on or subject to the rules of a board of trade, exchange or market located outside of the U.S.

When it adopted Part 30, the Commission recognized that many complexities would need to be addressed by the staff in the years after adoption of these rules.[9] Soon after the Commission adopted the original Part 30 rules, the staff of the Division of Trading and Markets[10] published several interpretative letters and no-action positions regarding the application of the registration requirements of Part 30 to foreign firms, and their ability to obtain an exemption from certain of the requirements of Part 30, pursuant to Rule 30.10. Those letters and positions were described in some detail in the August 1999 Notice of Proposed Rulemaking.[11] With the proposed amendments to Part 30 discussed below, the Commission will codify some of those interpretations and positions. Persons who properly relied on interpretative statements in the past must henceforth comply with the new rules, if adopted.[12]

II. Rule Amendments

Rule 30.4(a) requires any person who solicits or accepts orders and/or money for foreign futures and options contracts from domestic foreign futures or foreign options customers[13] to register as an FCM under the Act. Rule 30.4(e) requires registered FCMs to maintain an office in the U.S. that is managed by an individual domiciled in the U.S. and registered with the Commission as an associated person ("AP"). Rule 30.10 permits any person to seek exemption from any provision of Part 30.

The Commission believes that it can provide clarity to its registration requirements under Part 30 by specifically addressing, in Rule 30.4, when registration by an FFOB is *not* required. Thus, the Commission proposes amending Rule 30.4(a) to clarify that FFOBs that carry foreign futures and foreign options customer omnibus accounts[14] of U.S. FCMs, but have no direct contact with the customers whose accounts comprise the omnibus accounts, are not required to register as FCMs. This is the case even if the FFOB has U.S. bank branches. The Commission also proposes amending Rule 30.4(a) to clarify that an FFOB that carries proprietary accounts of a U.S. FCM, or an FFOB that trades for its own proprietary accounts (including accounts of its U.S. affiliates and others whose accounts are "proprietary" to the FFOB under CFTC Rule 1.3(y)), need not register as an FCM so long as certain conditions are met. These FFOBs, however, otherwise remain subject to provisions of Part 30 that are not dependent upon registration as an FCM, such as the antifraud provision of Rule 30.9.

In addition, the Commission proposes amending Rule 30.10 to clarify that an FFOB with U.S. bank branches may be eligible for confirmation of Rule 30.10 relief if it complies with the following conditions:

(1) No U.S. bank branch, office or division will engage in the trading of futures or options on futures within or from the U.S., except for its own account[15];

(2) No U.S. bank branch, office or division will refer any foreign futures or foreign options customer to the FFOB or otherwise be involved in the FFOB's business in foreign futures and foreign option transactions;

(3) No U.S. bank branch, office or division will solicit any foreign futures or foreign options business or purchase or sell foreign futures or foreign option contracts on behalf of any foreign futures or foreign option customers or otherwise engage in any activity subject to regulation under Part 30 or engage in any clerical duties related thereto. If any U.S. division, office or branch desires to engage in such activities, it will only do so through an appropriate CFTC registrant;

(4) The FFOB will maintain outside the U.S. all contract documents, books and records regarding foreign futures and option transactions;

(5) The FFOB and each of its U.S. bank branches, offices or divisions agree to provide upon request of the Commission, the NFA or the U.S. Department of Justice, access to their books and records for the purpose of ensuring compliance with the undertakings and consents to make such records available for inspection at a location in the U.S. within 72 hours after service of the request;[16] and

[4] No subsequent requests for no-action by Part 30 participants have proposed IB registration of a U.S. bank branch as a way of authorizing referral of business from the U.S. bank branch to foreign-based branches.

[5] 52 FR 28980 (August 5, 1987). CFTC rules may be found at 17 CFR Ch. 1 (2003).

[6] "Foreign futures" as defined in Part 30 means "any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade." Commission Rule 30.1(a).

[7] "Foreign option" as defined in Part 30 means "any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'put', 'call', 'advance guaranty', or 'decline guaranty', made or to be made on or subject to the rules of any foreign board of trade." Commission Rule 30.1(b).

[8] Pursuant to Commission Rule 30.1(c), "Foreign futures or foreign options customer" means "any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: Provided, That an owner or holder of a proprietary account as defined in paragraph (y) of [Commission Rule] 1.3 shall not be deemed to be a foreign futures or foreign options customer within the meaning of §§ 30.6 and 30.7 of this part."

[9] "The Commission is mindful that the implementation of a regulatory scheme such as this is an evolving process, particularly as the issues are numerous and complex. Accordingly, the Commission invites affected persons to seek interpretations of the rules, no-action positions and exemptions, as appropriate. In this regard, the Commission has determined to retain the general exemptive provision set forth in rule 30.10, as proposed." 52 FR at 28980–28981.

[10] Under the CFTC staff reorganization effective July 2002, the Division of Trading and Markets was eliminated and the Part 30 functions were assumed by the new Division of Cleaning and Intermediary Oversight.

[11] 64 FR 46613, 46614–46616.

[12] If the Commission adopts the proposed amendments, prior staff positions on these subjects will be superceded. Because the rule amendments contain no substantive changes to prior staff interpretative statements and no-action letters, no party should be disadvantaged. The new rules would make these staff positions more accessible and more widely understood and obviate the need for individualized relief.

[13] *See* n. 8, *supra*.

[14] "Foreign futures and foreign options customer omnibus accounts" are defined at Rule 30.1(d), 17 CFR § 30.1(d) (2003).

[15] That is, the "house" account of the entity. This is the "narrow" definition of proprietary, as set forth in Commission Rule 1.17(b)(3).

[16] The Commission has recognized that Japanese and Hong Kong laws require that original books and records of any firm located within either country be maintained within the local jurisdiction. *See CFTC Staff Letter* 95–83 [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,559 at 43,490 (September 20, 1995) (no-action position permitting the Japanese and Hong Kong affiliates of a U.S. FCM to accept directly foreign futures and options orders from certain sophisticated U.S. customers); 62 FR 47792 (September 11, 1997) (extending the relief under *CFTC Staff Letter* 95–83 to the Japanese and Hong Kong affiliates of all U.S. FCMs). If the proposed amendments are adopted, that letter will

Continued

(6) Although it will continue to engage in normal commercial activities, no U.S. bank branch, office or division will establish relationships in the U.S. with the broker's foreign futures and foreign options customers for the purpose of facilitating or effecting transactions in foreign futures and foreign option contracts in the U.S.

The Commission proposes that any FFOB that would not be required to register under the proposed Rule 30.4(a) because it solely carries a U.S. customer omnibus account, an account that would be classified as proprietary to the broker under Commission Rule 1.3(y), or a U.S. FCM's proprietary account, is also not required to register solely because it has U.S. bank branches, so long as it complies with the conditions specified in Rule 30.10(b)(1)–(6), as listed above.

The Commission solicits comment regarding the number of foreign futures or options brokers' non-bank branches located in the United States, as well as information concerning their activities.[17] The Commission also requests comment on the advisability of expanding the relief provided by the proposed rule amendments to foreign futures and options brokers with any type of U.S. branch, not just bank branches.

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[18] The proposed rules discussed herein would affect foreign members of foreign boards of trade who perform the functions of an FCM, some of which may be foreign affiliates of U.S. FCMs. The Commission previously has determined that, based upon the fiduciary nature of the FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rules may have on small entities.

B. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act of 1995[19] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission, through this rule proposal, solicits comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) 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; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including 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.

The Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection 3038–0023, including this proposed rule, is as follows:

Average burden hours per response: .1645.

Number of respondents: 73,610.

Frequency of response: On occasion; annually; semi-annually; quarterly.

The burden associated with this specific proposed rule, is as follows:

Average burden hours per response: .05.

Number of Respondents: 110.

Frequency of response: On occasion.

Persons wishing to comment on the estimated paperwork burden associated with this proposed rule should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington DC 20581, (202) 418–5160.

C. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) 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(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated 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 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. These proposed amendments are intended to clarify when foreign futures and options brokers who are members of a foreign board of trade must register or obtain an exemption from registration. The Commission is considering the costs and benefits of these rules in light of the specific provisions of section 15(a) of the Act:

1. Protection of market participants and the public. The amendments do not change the requirements to qualify for the exemption. Accordingly, they should have no effect on the Commission's ability to protect market participants and the public.

2. Efficiency and competition. The amendments are expected to benefit

be superceded. For the purpose of this rulemaking, the Commission will allow foreign futures and options brokers in Japan and Hong Kong to satisfy the books and records requirement by: (1) Providing within 72 hours authenticated copies of its books and records upon request of a Commission, NFA or U.S. Department of Justice representative; (2) providing within 72 hours access to original books and records in the foreign jurisdiction; (3) waiving objection to the admissibility of the copies as evidence in a Commission, NFA or U.S. Department of Justice action against the foreign futures and options broker; and (4) agreeing in the event of a proceeding to provide a witness to authenticate copies of books and records given to the Commission, NFA, or the U.S. Department of Justice. The Commission is clarifying that the books and records from a Japanese or Hong Kong FFOB are also subject to request by NFA and U.S. Department of Justice representatives, as is the case for an FFOB in any other jurisdiction.

[17] The rationale for providing relief to foreign firms with bank branches in the U.S. is that those branches are otherwise regulated by the banking authorities. Although this rationale would be inapplicable to non-bank branches, there may be other reasons why exemption from registration under Part 30 would be appropriate.

[18] 47 FR 18618–18621 (April 30, 1982).

[19] Pub. L. 104–13 (May 13, 1995).

efficiency and competition by enhancing understanding of the Commission's requirements for exemption.

3. Financial integrity of futures markets and price discovery. The amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets.

4. Sound risk management practices. The amendments being adopted herein should have no effect on the risk management practices of the futures and options industry.

5. Other public interest considerations. The amendments clarify the Commission's requirements for exemption of foreign futures and options brokers who are members of a foreign board of trade. Greater clarity should result in a system that is easier to understand and thereby more efficient.

After considering these factors, the Commission has determined to propose the amendments discussed above.

List of Subjects in 17 CFR Part 30

Definitions, Foreign futures, Foreign options, Reporting and recordkeeping requirements, Registration requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4(b), 4c and 8 thereof, 7 U.S.C. 2, 6(b), 6c and 12a (1982), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN OPTIONS AND FOREIGN FUTURES TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

2. Section 30.4 is proposed to be amended by revising paragraph (a) to read as follows:

§ 30.4 Registration required.

* * * * *

(a) To solicit or accept orders for or involving any foreign futures contract or foreign options transaction and, in connection therewith, to accept any money securities or property (or extend credit in lieu thereof), to margin, guarantee or secure any trades or contracts that result or may result therefrom, unless such person shall have registered, under the Act, with the Commission as a futures commission merchant and such registration shall not have expired nor been suspended nor revoked; *provided that,* a foreign futures and options broker (as defined in § 30.1(e)) is not required to register as an FCM:

(1) In order to accept orders from or to carry a U.S. futures commission merchant foreign futures and options customer omnibus account, as that term is defined in Rule 30.1(d);

(2) In order to accept orders from or to carry a U.S. FCM proprietary account, as that term is defined in paragraph (y) of § 1.3 of this chapter; or

(3) In order to accept orders from or carry a U.S. affiliate account which is proprietary to the foreign broker, as "proprietary account" is defined in paragraph (y) of § 1.3 of this chapter. Such foreign futures and options broker remains subject to all other applicable provisions of the Act and of the rules, regulations and orders thereunder. Foreign futures and options brokers that have U.S. bank branches, offices or divisions engaging in the above-listed activity are not required to register as an FCM if they comply with the conditions listed in § 30.10(b)(1) through (6).

* * * * *

3. Section 30.10 is proposed to be amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 30.10 Petitions for exemption.

(a) Any person adversely affected by any requirement of this part may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that he should be exempt from such requirement. The Commission may, in its discretion, grant such an exemption if that person demonstrates to the Commission's satisfaction that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. The petition will be granted or denied on the basis of the papers filed. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

(b) Any foreign person that files a petition for an exemption under this section shall be eligible for such an exemption notwithstanding its presence in the United States through U.S. bank branches or divisions if, in conjunction with a petition for confirmation of Rule 30.10 comparability relief under an existing Rule 30.10 Commission order, it complies with the following conditions:

(1) No U.S. bank branch, office or division will engage in the trading of futures or options on futures within or from the United States, except for its own proprietary account;

(2) No U.S. bank branch, office or division will refer any foreign futures or options customer to the foreign broker or otherwise be involved in the foreign broker's business in foreign futures and option transactions;

(3) No U.S. bank branch, office or division will solicit any foreign futures or options business or purchase or sell foreign futures and option contracts on behalf of any foreign futures or option customers or otherwise engage in any activity subject to regulation under part 30 or engage in any clerical duties related thereto. If any U.S. division, office or branch desires to engage in such activities, it will only do so through an appropriate CFTC registrant;

(4) The foreign person will maintain outside the United States all contract documents, books and records regarding foreign futures and option transactions;

(5) The foreign person and each of its U.S. bank branches, offices or divisions agree to provide upon request of the Commission, the National Futures Association or the U.S. Department of Justice, access to their books and records for the purpose of ensuring compliance with the foreign undertakings and consents to make such records available for inspection at a location in the United States within 72 hours after service of the request; and

(6) Although it will continue to engage in normal commercial activities, no U.S. bank branch, office or division of the foreign person will establish relationships in the United States with the applicant's foreign futures and options customers for the purpose of facilitating or effecting transactions in foreign futures and option contracts in the United States.

Dated: March 30, 2004.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–7671 Filed 4–5–04; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–013]

RIN 1625–AA08

Special Local Regulations for Marine Events; Maryland Swim for Life, Chester River, Chestertown, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent special local regulation for the "Maryland Swim for Life," a marine event held on the waters of the Chester River near Chestertown, Maryland. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Chester River during the event.

DATES: Comments and related material must reach the Coast Guard on or before June 7, 2004.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

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 (CGD05–04–013), 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. But you may submit a request for a meeting by writing to the address listed 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 Maryland Swim for Life Association annually sponsors the "Maryland Swim for Life", an open water swimming competition held on the waters of the Chester River, near Chestertown, Maryland. The event is held each year on the second Saturday in July. Approximately 120 swimmers start from Rolph's Wharf and swim upriver 3 miles then swim down river returning back to Rolph's Wharf. A fleet of approximately 25 support vessels accompanies the swimmers. To provide for the safety of participants and support vessels, the Coast Guard will restrict vessel traffic in the event area during the swim.

Discussion of Proposed Rule

The Coast Guard proposes to establish a permanent regulated area on specified waters of the Chester River, near Chestertown, Maryland. The regulated area would include all waters of the Chester River between Rolph's Wharf and the Maryland S.R. 213 Highway Bridge. The proposed special local regulations would be enforced annually on the second Saturday in July. The effect would be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel would be allowed to enter or remain in the regulated area. The proposed regulated area is needed to control vessel traffic during the event to enhance the safety of participants and transiting vessels.

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).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this proposed regulation would prevent traffic from transiting a portion of the Chester River during the event, the effect of this proposed regulation would not be significant due to the limited duration that the regulated area will be enforced and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. The Coast Guard would also publish an annual notice of implementation of a regulation in the **Federal Register**, setting out the exact date of the event.

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. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Chester River during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be enforced for only one day each year. Before the enforcement period, we would issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it

qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under those sections. Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100–SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Add § 100.533 to read as follows:

§ 100.533 Maryland Swim for Life, Chester River, Chestertown, MD.

(a) *Regulated Area.* The regulated area is established for waters of the Chester River from shoreline to shoreline, bounded on the south by a line drawn at latitude 39°10′16″ N, near the Chester River Channel Buoy 35 (LLN–26795) and bounded on the north at latitude 39°12′30″ N by the Maryland S.R. 213 Highway Bridge. All coordinates reference Datum NAD 1983.

(b) *Definitions.* The following definitions apply to this section:

Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol; and

(ii) Proceed as directed by any Official Patrol.

(d) *Enforcement period.* This section will be enforced annually on the second

Saturday in July. A notice of implementation of this section will be published annually in the **Federal Register** and disseminated through Fifth District Local Notice to Mariners and marine Safety Radio Broadcast on VHF–FM marine band radio channel 22 (157.1 MHz)

Dated: March 5, 2004.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 04–7791 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–019]

RIN 1625–AA09

Drawbridge Operation Regulations; Harlem River, Newtown Creek, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating regulations governing the operation of the Willis Avenue Bridge, mile 1.5, the Third Avenue Bridge, mile 1.9, the Madison Avenue Bridge, mile 2.3, all across the Harlem River and the Pulaski Bridge, mile 0.6, across Newtown Creek. This notice of proposed rulemaking would allow the bridge owner to keep the above bridges closed for periods of time on the first Sunday in both May and November in order to facilitate the running of the Five Borough Bike Tour and the New York City Marathon, respectively.

DATES: Comments must reach the Coast Guard on or before June 7, 2004.

ADDRESSES: You may mail comments and related material to Commander (obr), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joe Schmied, Project Officer, First Coast Guard District, (212) 668–7195.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–04–019), 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 if 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. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, 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 Willis Avenue Bridge, mile 1.5, across the Harlem River has a vertical clearance of 24 feet at mean high water (MHW) and 30 feet at mean low water (MLW) in the closed position.

The Madison Avenue Bridge, at mile 2.3, across the Harlem River has a vertical clearance of 25 feet at mean high water and 29 feet at mean low water in the closed position.

The Third Avenue Bridge, at mile 1.9, across the Harlem River has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water in the closed position.

The Pulaski Bridge across Newtown Creek, mile 0.6, has a vertical clearance of 39 feet at MHW and 43 feet at MLW in the closed position. The current operating regulations for the Pulaski Bridge listed at 117.801(g) require it to open on signal if at least a two-hour advance notice is given.

The current operating regulations for the Willis Avenue, Third Avenue, and Madison Avenue bridges, require the bridges to open on signal from 10 a.m. to 5 p.m., if at least four-hours notice is given.

The owner of the bridges, New York City Department of Transportation requested a change to the operating regulations for the Willis Avenue Bridge, the Third Avenue Bridge, the Madison Avenue Bridge, and the Pulaski Bridge, to facilitate the running of the Five Borough Bike Tour and the New York City Marathon on the first Sunday in both May and November, respectively. They requested the bridges be closed for various extended periods of time between the hours of 8 a.m. and 5 p.m.

Traditionally, these bridge closures were accomplished each year by publishing a temporary final rule in the **Federal Register** with the bridge closures occurring at various times ranging from 8 a.m. through 5 p.m. The closure times were established to coincide with the race route through the city.

This proposed rule would make the traditional closures part of the permanent drawbridge operation regulations. New York City Department of Transportation would provide the exact dates and times for each bridge several weeks in advance of the race. Those dates and times would be published in the Local Notice to Mariners.

The Coast Guard believes this rule is reasonable because it would simplify the traditional bridge closure process. Additionally, the bridge closures are on Sundays when the bridges normally receive no requests to open.

Discussion of Proposal

This proposed change would amend 33 CFR 117.789 by revising paragraph (c), which identifies the operating schedule of the Willis Avenue Bridge, the Third Avenue Bridge, and the Madison Avenue Bridge. This proposed rule would also amend 33 CFR 117.801 by revising paragraph (g), which identifies the operating schedule for the Pulaski Bridge.

This proposed rule would allow the bridges to remain in the closed position for various extended periods of time between the hours of 8 a.m. and 5 p.m. on the first Sunday in both May and November to facilitate the running of the Five Borough Bike Tour and the New York City Marathon.

The Five Borough Bike Tour is run on the first Sunday in May. During this event the Third Avenue and Madison Avenue bridges, across the Harlem River, are usually closed from 8 a.m. to 12 p.m. and the Pulaski Bridge, across

Newtown Creek, is normally closed from 9:30 a.m. to 11:30 a.m.

The New York City Marathon is run on the first Sunday in November. During this event the Willis Avenue and Madison Avenue bridges, across the Harlem River, are normally closed from 10 a.m. to 5 p.m. and the Pulaski Bridge, across Newtown Creek, is normally closed from 8:30 a.m. to 3 p.m.

The exact dates and times each bridge will be closed for the future running of the Five Borough Bike Tour and the New York City Marathon may be slightly changed and will be published in the Local Notice to Mariners several weeks in advance of each respective event.

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 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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under the regulatory policies and procedures of DHS, is unnecessary.

This conclusion is based on the fact that the bridge closures are of short duration on a Sunday in May and November when the bridges normally do not receive any requests to open.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 section 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge closures are of short duration on a Sunday in May and November when the bridges normally do not receive any requests to open.

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.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

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 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 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 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 M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environment documentation because it has been determined that the promulgation of operating regulations or procedures for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out 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; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.789(c) to read as follows:

§ 117.789 Harlem River.

* * * * *

(c)(1) The draws of the bridges at 103 Street, mile 0.0, Willis Avenue, mile 1.5, Third Avenue, mile 1.9, Madison Avenue, mile 2.3, 145 Street, mile 2.8, Macombs Dam, mile 3.2, 207 Street, mile 6.0, and the two Broadway Bridges, mile 6.8, shall open on signal from 10 a.m. to 5 p.m. if at least four hours notice is given to the New York City Highway Radio (Hotline) Room.

(2) The Willis Avenue Bridge, mile 1.5, the Third Avenue Bridge, mile 1.9, and the Madison Avenue Bridge, mile 2.3, need not open for vessel traffic between 8 a.m. and 5 p.m. on the first Sunday in May and the first Sunday in November. The exact time and date of each bridge closure will be published in the Local Notice to Mariners several weeks prior to the first Sunday of both May and November.

* * * * *

3. Revise § 117.801(g) to read as follows:

§ 117.801 Newtown Creek, Dutch Kills, English Kills, and their tributaries.

* * * * *

(g)(1) The draw of the Pulaski Bridge, mile 0.6, and the Greenpoint Avenue Bridge, mile 1.3, shall open on signal if at least a two hour advance notice is given to the New York City Department of Transportation Radio (Hotline) Room.

(2) The Pulaski Bridge, mile 0.6, need not open for vessel traffic between 8 a.m. and 5 p.m. on the first Sunday in both May and November. The exact time and date of the bridge closure will be published in the Local Notice to Mariners several weeks prior to the first Sunday of both May and November.

Dated: March 25, 2004.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 04–7790 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–0AR–2003–FL–0001–200414(b); FRL–7643–2]

Approval and Promulgation of Implementation Plans: Florida; Broward County Aviation Department Variance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the State of Florida for the purpose of a department order granting a variance from Rule 62–252.400 to the Broward County Aviation Department. EPA believes that this proposed revision to the SIP is approvable based on the June 23, 1993, EPA policy memorandum entitled, *Impact of the Recent Onboard Decision on Stage II Requirements in Moderate Nonattainment Areas* which indicates that a Stage II program is not a mandatory requirement for areas classified "moderate" or below, upon EPA's promulgation for On-board Refueling Vapor Recovery systems.

In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before May 6, 2004.

ADDRESSES: Comments may be submitted by mail to: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **SUPPLEMENTARY INFORMATION** (sections III.B.1. through 3.) which is published in the Rules Section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: March 24, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 04–7646 Filed 4–5–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 61, and 69

[CC Docket No. 96–128; DA 04–774]

Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; reply comment period extended.

SUMMARY: On March 24, 2004, the Commission granted a request by Martha Wright *et al.* to extend the deadline for filing reply comments regarding a Petition For Rulemaking or, in the Alternative, Petition To Address Referral Issues In A Pending Rulemaking (*Wright Petition*) filed in CC Docket No. 96–128.

DATES: Reply comments are due on or before April 21, 2004.

ADDRESSES: Federal Communications Commission, Marlene H. Dortch, Office of the Secretary, 445 12th Street SW., TW–A325, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for information on additional instructions for filing paper copies.

FOR FURTHER INFORMATION CONTACT: Joi Roberson Nolen, Wireline Competition Bureau, 202–418–1520.

SUPPLEMENTARY INFORMATION: On December 31, 2003, the Wireline Competition Bureau released the *Wright Public Notice* seeking comment on a Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues In a Pending Rulemaking (*Wright Petition*) filed by Martha Wright and other prison inmate and non-inmate petitioners (jointly, "the Wright Petitioners"). The *Wright Public Notice* stated that comments would be due 20 days after publication of the public notice in the **Federal Register**, and reply comments would be due 30 days after **Federal Register** publication. The **Federal Register** published the *Wright Public Notice* on January 20, 2004. *See* Implementation of the Pay Telephone

Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128, Notice of Proposed Rulemaking, 69 FR 2697, January 20, 2004. Accordingly, comments were due by February 9, 2004, and reply comments were due by February 19, 2004. The Bureau subsequently granted the joint request of Evercom Systems, Inc., T–NETIX, Inc., and Corrections Corporation of America for a one-month extension of the deadline so that parties could file comments by March 10, 2004, and reply comments by March 31, 2004. *See* Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128, Notice of Proposed Rulemaking; Comment Periods Extended, 69 FR 7615, February 18, 2004.

On March 16, 2004, the Wright Petitioners filed a motion to extend the deadline for filing reply comments in this proceeding. In their pleading, the Wright Petitioners contend that many of the oppositions submitted in response to the *Wright Petition* are supported by multiple expert affidavits and studies each of which will require time-consuming analysis and rebuttal by the Wright Petitioners' expert. The Wright Petitioners further assert that such analysis and rebuttal can not be completed in the current 15-day reply comment period. T–NETIX, a commenter in the proceeding, has consented to the motion. T–NETIX asserts that the extension is warranted given the extensive initial comments filed in response to the *Wright Petition* and the crucial legal and public policy issues at stake. No oppositions to the request for an extension of time have been filed.

It is the policy of the Commission that extensions of time are not routinely granted. *See* 47 CFR 1.46(a). In this instance, however, the Bureau finds that the commenters have shown good cause for an extension of the deadline for filing comments and reply comments in this proceeding. Because of the complexity of the issues, the related necessary economic analysis, and the length of the pleadings, we grant a limited extension so that parties may file reply comments by April 21, 2004. This matter shall continue to be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1206. All other requirements discussed in the **Federal Register** publication of the *Wright Public Notice* remain in effect. *See* Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128, Notice of Proposed Rulemaking, 69 FR 2697, January 20, 2004.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–7804 Filed 4–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 13 and 80

[WT Docket No. 00–48; RM–9499; FCC 04–3]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission solicits comment on the Commission's rules governing the Maritime Radio Services. These comments will aid the Commission in establishing rules to further the implementation of the Global Maritime Distress and Safety System (GMDSS) and continue the process of streamlining, consolidating and revising domestic maritime radio regulations. In addition, the comments will aid the Commission in assessing the impact that possible rule changes may have on the maritime community, including vessel operators, manufacturers of marine radio equipment, and commercial radio operator licensees. These comments will provide the Commission with feedback that will allow it to better craft rules that will enhance safety while at the same time avoiding the imposition of unnecessary or unwarranted burdens on regulated entities.

DATES: Written comments are due on or before June 7, 2004, and reply comments are due on or before July 6, 2004.

ADDRESSES: Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, *Jeff.Tobias@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Second Further Notice of Proposed Rulemaking (Second FNPRM) in WT Docket No. 00–48, FCC 04–3, adopted on January 8, 2004, and released on February 12, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In the Second FNPRM, the Commission solicits comment on whether the Commission should: (i) Revise the requirements for digital selective calling (DSC) equipment to comport with international standards that were adopted after the Commission last requested comment on this issue; (ii) add the INMARSAT F–77 ship earth station to the list of ship earth stations that are authorized to be used in lieu of a single sideband radio by vessels traveling more than 100 nautical miles from shore; (iii) require all small passenger vessels to have a reserve power source; (iv) make certain commercial radio operator licenses and permits valid for the lifetime of the holder, obviating the need for such licensees to file periodic renewal applications; (v) introduce greater flexibility into the examination process by removing rule provisions that codify the number of questions for each examination element and that require the exclusive use of new question pools immediately upon their public availability; (vi) adopt technical standards for equipment to be used in the Ship Security Alert System; (vii) further update part 80 of the Commission's rules in response to recent changes in international standards, and specifically whether certain on-board frequencies should be authorized for narrowband use domestically; and (viii) revise or eliminate certain part additional 80 rules pursuant to recommendations submitted in the Commission's 2002 Biennial Review proceeding.

I. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

2. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

B. Comment Dates

3. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before June 7, 2004 and reply comments on or before July 6, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

4. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. Filings can be sent first class by the U.S. Postal Service, by an overnight courier or hand and message-delivered. Hand and message-delivered paper filings must be delivered to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Overnight courier (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

5. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Jeffrey Tobias, Wireless Telecommunications Bureau, 445 12th St., SW., Room 4–A366, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, WT Docket No. 00–48), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the Commission's copy contractor, Qualex International, Inc., 445 12th St., SW., Room CY–B402, Washington, DC 20554.

C. Paperwork Reduction Act

6. The Second FNPRM does not contain any new or modified information collection.

II. Initial Regulatory Flexibility Analysis

7. As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the rules proposed or discussed in the Second FNPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Second FNPRM in WT Docket No. 00–48, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the Second FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act (RFA).

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

8. In the Second FNPRM, we seek comment on rule amendments that are intended to enhance maritime safety, promote the efficient use of the maritime radio spectrum, and, to the extent consistent with these first two objectives, remove unnecessary regulatory burdens. We also seek to conform the Commission's part 80 rules with international standards where doing so will not undermine domestic regulatory objectives. In the Second FNPRM, we first request comment on whether we should adopt new requirements for digital selective calling equipment that conform to recently adopted international standards for such equipment. Second, we invite comment on whether to augment the list of ship earth stations approved for use in lieu of a single sideband radio. Specifically, we invite comment on whether to add the INMARSAT F–77 ship earth station to the list. Next, we seek comment on a recommendation by the National Transportation Safety Board to require that all small passenger vessels have a reserve power source. In addition, we ask interested parties to consider whether we should make certain commercial radio operator licenses and permits valid for the lifetime of the holder, obviating the need for such licensees to file periodic renewal applications. We also ask for comment on whether we should introduce greater flexibility into the examination process by removing rule provisions that codify the number of questions for each examination element and that require the exclusive use of new question pools immediately upon their public availability. In addition, we request comment to assist us in crafting rules to guide the industry in making communications equipment that will meet the functional needs of the Ship Security Alert System. We also invite recommendations for further updating of part 80 of our rules in response to recent changes in international standards, and specifically request comment on whether certain on-board frequencies should be authorized for narrowband use domestically, as they are internationally. Finally, we request comment on suggestions by both Globe Wireless and the Commission that certain regulatory provisions have become outdated, and therefore should be revised or eliminated.

B. Legal Basis for Proposed Rules

9. The proposed action is authorized under sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), and 332.

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

10. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA

defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 governmental entities in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by adoption of rules discussed in the Second FNPRM.

11. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF), medium frequency (MF), or high frequency (HF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, an aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. For purposes of this IRFA, therefore, the applicable definition of small entity is the definition under the SBA rules applicable to wireless telecommunications. Pursuant to this definition, a "small entity" for purposes of the ship station licensees, public coast station licensees, or other marine radio users that may be affected by these rules, is any entity employing 1,500 or fewer persons. 13 CFR 121.201 (NAICS Code 517212). Since the size data provided by the Small Business Administration do not enable us to make a meaningful estimate of the number of marine radio service providers and users that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that twelve radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had at least 1,000 employees. Thus, we estimate that as many as 1,166 small entities may be affected. We invite comment on whether this is the correct definition to use in this context. We note in this regard that one of the discussed rule changes would affect small passenger vessels, and the Passenger Vessel Association has stated in comments in this proceeding that the vast majority of U.S. passenger vessel operating companies are small businesses. We accordingly request commenters to consider whether the number of small passenger vessel operators potentially affected by the rule is not fully reflected in the above definition and estimate. In keeping with the spirit of the RFA, we choose to err, if at all, on the side of overestimating the number of small entities potentially affected by these rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

12. We believe two of the possible rule changes discussed in the Second FNPRM may potentially have a direct, significant economic impact on a substantial number of small entities. As noted, we have requested comment on whether to impose new requirements on digital selective calling equipment in conformity with recently adopted international standards for such equipment. We invite interested parties to address the economic impact of the new requirements on small vessel operators and other small businesses that may be subject to the requirements. It is our tentative conclusion that mandating compliance with the new requirements will benefit maritime safety. We seek information on whether the compliance costs may outweigh the safety benefits of these requirements, and whether there are alternative means of securing the safety benefits of these requirements through means that are less burdensome to regulatees.

13. In addition, we have requested comment on an NTSB recommendation that the Commission amend its rules to require that small passenger vessels have VHF radiotelephone communications systems on board that can operate even when the vessel loses power. Currently, § 80.917 of the Commission's rules imposes a requirement on vessels of more than 100 gross tons to have a reserve power supply. Adoption of the NTSB recommendation would in effect remove the tonnage limitation from § 80.917, and impose the reserve power supply requirement on all passenger vessels, regardless of size. The NTSB states that imposing the reserve power supply requirement on all small passenger vessels will prevent accidents and save lives. Imposition of such a requirement would likely require small passenger vessel operators, including small passenger vessel operators that are small entities, to purchase and install additional equipment on their vessels. The record in this proceeding does not indicate the estimated cost of such equipment or the estimated overall costs of compliance with such a requirement. In the Second FNPRM, we specifically ask commenters to provide information on the costs to small vessel operators of complying with such a requirement, and we reiterate that request here.

14. We do not believe any of the other matters discussed in the Second FNPRM would have a direct, significant economic impact on a substantial number of small entities. However, any commenters that disagree with that tentative conclusion are asked to explain the basis of that disagreement.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

15. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

16. In the Second FNPRM, we request comment on whether to incorporate into the Commission's rules newly adopted international standards for digital selective calling equipment. We describe here, and seek comment on, possible alternatives to imposing these new requirements that might minimize the economic impact on small entities. First, we ask commenters to consider whether it would be appropriate to exempt small businesses from any additional requirements for digital selective calling equipment that may be

adopted. Commenters advocating such an exemption should propose criteria for identifying entities that should be exempt, and should explain why they believe such an exemption represents a reasonable compromise between the goals of promoting maritime safety and minimizing compliance costs for small entities. In addition, if we do determine to impose new requirements on digital selective calling equipment, we would consider whether we should grandfather some vessels from the requirement, either indefinitely or for a specified term of years, or whether there should be a phased-in schedule for compliance, with possibly different compliance timetables for vessels based, possibly, on vessel size or on whether the vessel operator is a small business. Interested parties should address these alternatives. Finally, we seek comment on whether an alternative equipment requirement, less costly to small passenger vessel operators, could provide the same or similar safety benefits as the international standards. Proponents of such an alternative requirement should compare the estimated costs of complying with the international digital selective calling equipment standards with the estimated costs of complying with the proposed alternative, and explain why they believe the proposed alternative will be adequate to address safety concerns. Commenters are also invited to suggest alternatives other than those discussed here.

17. In the Second FNPRM, we also invite comment on an NTSB recommendation to require that small passenger vessels, regardless of size, have VHF radiotelephone communications systems on board that can operate even when the vessel loses power. We tentatively conclude that the most direct way of imposing such a requirement is removing the tonnage limitation in § 80.917, which now exempts vessels of 100 gross tons or less from an otherwise applicable reserve power supply requirement. However, we also specifically ask interested parties to recommend other means of addressing the safety needs of small vessel operators, crewmembers, and passengers, either as alternatives to the NTSB recommendation or as supplementary measures.

18. We describe here, and seek comment on, possible alternatives to the NTSB recommendation that might minimize the economic impact on small entities. First, we ask commenters to consider whether the reserve power supply requirement should be expanded only to a subset of additional small passenger vessels rather than to all small passenger vessels. For example, instead of eliminating the tonnage limitation in current § 80.917, we might simply lower the threshold. Commenters advocating a lowered tonnage threshold should recommend a specific threshold and explain why they believe it represents a reasonable compromise between the goals of promoting maritime safety and minimizing compliance costs for small entities. Alternatively, we could restrict the applicability of the reserve power supply requirement based on the size of the small passenger vessel operator, perhaps exempting only those small passenger vessel operators that meet the statutory definition of a small business. Commenters advocating such an approach should explain, *inter alia*, if it might result in exempting certain vessels exceeding 100 gross tons that are now fully subject to the reserve power supply requirement, and the ramifications of such an exemption for maritime safety. In addition, we might consider providing a continuing exemption for vessels below a certain size, or owned by a small business, that operate only in protected inland waterways. If we do determine to impose a reserve power supply requirement on all small passenger vessels, we would consider whether we should grandfather some vessels from the requirement, either indefinitely or for a specified term of years, or whether there should be a phased-in schedule for compliance, with possibly different compliance timetables for vessels based, possibly, on vessel size or on whether the vessel operator is a small business. Interested parties should address these alternatives. Finally, we seek comment on whether an alternative equipment requirement, less costly to small passenger vessel operators, could provide the same or similar safety benefits as a reserve power supply requirement. Proponents of such an alternative requirement should compare the estimated compliance costs of the reserve power supply requirement with the estimated compliance costs of the proposed alternative, and explain why they believe the proposed alternative will be adequate to address safety concerns. Commenters are also invited to suggest alternatives other than those discussed here.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

III. Ordering Clauses

19. The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Second Further Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–7365 Filed 4–5–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–17359]

RIN 2127–AJ27

Preliminary Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of preliminary theft data; request for comments.

SUMMARY: This document requests comments on data about passenger motor vehicle thefts that occurred in calendar year (CY) 2002 including theft rates for existing passenger motor vehicle lines manufactured in model year (MY) 2002. The preliminary theft data indicate that the vehicle theft rate for CY/MY 2002 vehicles (2.49 thefts per thousand vehicles) decreased by 23.6 percent from the theft rate for CY/MY 2001 vehicles (3.26 thefts per thousand vehicles).

Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment.

DATES: Comments must be submitted on or before June 7, 2004.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–2004–17359 and or RIN number 2127–AJ27] 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 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building,

400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

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: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data, and publish the data for review and comment. To fulfill the section 33104(b)(4) mandate, this document reports the preliminary theft data for CY 2002, the most recent calendar year for which data are available.

In calculating the 2002 theft rates, NHTSA followed the same procedures it used in calculating the MY 2001 theft rates. (For 2001 theft data calculations, see 68 FR 54857, September 19, 2003). As in all previous reports, NHTSA's data were based on information provided to the agency by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a governmental system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources. The 2002 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 2002 vehicles of that line stolen during calendar year 2002, by the total number of vehicles in that line manufactured for MY 2002, as reported by manufacturers to the Environmental Protection Agency.

The preliminary 2002 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 2001. The preliminary theft rate for MY 2002 passenger vehicles stolen in calendar year 2002 decreased to 2.49 thefts per thousand vehicles produced, a decrease of 23.6 percent from the rate of 3.26 thefts per thousand vehicles experienced by MY 2001 vehicles in CY 2001. For MY 2002 vehicles, out of a total of 224 vehicle lines, 38 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991 (See 59 FR 12400, March 16, 1994). Of the 38 vehicle lines with a theft rate higher than 3.5826, 34 are passenger car lines, 3 are multipurpose passenger vehicle lines, and one is a light-duty truck lines.

In Table I, NHTSA has tentatively ranked each of the MY 2002 vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, including the data for the production volumes of individual vehicle lines.

Comments must not exceed 15 pages in length (49 CFR 553.21). Attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to Dockets. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this document will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this document will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Authority: 49 U.S.C. 33101, 33102 and 33104; delegation of authority at 49 CFR 1.50.

PRELIMINARY REPORT OF THEFT RATES FOR 2002 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2002

	Manufacturer	Make/model (line)	Thefts 2002	Production (Mfr's) 2002	2002 Theft rate (per 1000 vehicles produced)
1	DAIMLERCHRYSLER	CHRYSLER NEON[1]	1	24	41.6667
2	AUDI	24/QUATTRO	32	1612	19.8511
3	DAIMLERCHRYSLER	DODGE INTREPID	1657	111491	14.8622
4	DAIMLERCHRYSLER	DODGE STRATUS	1254	106771	11.7448
5	SUZUKI	ESTEEM	108	9670	11.1686
6	DAIMLERCHRYSLER	CHRYSLER SEBRING	611	75163	8.1290
7	DAIMLERCHRYSLER	DODGE NEON	959	119253	8.0417
8	HONDA	ACURA NSX	2	254	7.8740
9	MITSUBISHI	MONTERO	206	27266	7.5552
10	MITSUBISHI	GALANT	668	92948	7.1868
11	MITSUBISHI	MIRAGE	60	9240	6.4935
12	MITSUBISHI	MONTERO SPORT	350	57457	6.0915
13	FORD MOTOR CO	FORD F150 PICKUP	27	4473	6.0362
14	AUDI	S8/QUATTRO	2	340	5.8824
15	MITSUBISHI	ECLIPSE	239	41334	5.7822
16	NISSAN	MAXIMA	490	86036	5.6953
17	KIA MOTORS	OPTIMA	155	27593	5.6174
18	FORD MOTOR CO	FORD ESCORT	457	81672	5.5956
19	GENERAL MOTORS	PONTIAC GRANT AM	838	154306	5.4308
20	DAIMLERCHRYSLER	CHRYSLER SEBRING CONVERTIBLE	251	46637	5.3820
21	MITSUBISHI	LANCER	397	73991	5.3655
22	DAIMLERCHRYSLER	CHRYSLER CONCORDE	194	37131	5.2247
23	MITSUBISHI	DIAMANTE	96	19707	4.8714
24	DAIMLERCHRYSLER	CHRYSLER INTREPID	6	1254	4.7847
25	TOYOTA	COROLLA	690	147983	4.6627
26	DAIMLERCHRYSLER	CHRYSLER 300M	167	36663	4.5550
27	GENERAL MOTORS	OLDSMOBILE ALERO	333	79373	4.1954
28	KIA MOTORS	SPECTRA	298	71837	4.1483
29	KIA MOTORS	RIO	227	57292	3.9622
30	GENERAL MOTORS	CHEVROLET CAVALIER	1017	259230	3.9232
31	TOYOTA	LEXUS IS	93	24079	3.8623
32	GENERAL MOTORS	CADILLAC SEVILLE	97	25128	3.8602
33	SUZUKI	VITARA/GRAND	232	60318	3.8463
34	NISSAN	SENTRA	434	113962	3.8083
35	GENERAL MOTORS	PONTIAC SUNFIRE	286	76445	3.7413
36	DAIMLERCHRYSLER	CHRYSLER PROWLER	5	1348	3.7092
37	GENERAL MOTORS	CHEVROLET MONTE CARLO	252	68570	3.6751
38	FORD MOTOR CO	LINCOLN TOWN CAR	132	36635	3.6031
39	GENERAL MOTORS	CHEVROLET BLAZER S10/T10	369	103341	3.5707
40	GENERAL MOTORS	CHEVROLET MALIBU	495	144946	3.4151
41	GENERAL MOTORS	CHEVROLET PRIZM	96	28197	3.4046
42	NISSAN	ALTIMA	651	192701	3.3783
43	HYUNDAI	ACCENT	307	92157	3.3313
44	JAGUAR	XK8	8	2455	3.2587
45	MERCEDES–BENZ	129 (SL–CLASS)	9	2776	3.2421
46	NISSAN	INFINITI Q45	26	8065	3.2238
47	MAZDA	MILLENIA	67	20800	3.2212
48	DAIMLERCHRYSLER	DODGE CARAVAN/GRAND	772	241696	3.1941
49	ISUZU	TROOPER	40	12638	3.1651
50	GENERAL MOTORS	OLDSMOBILE AURORA	34	10861	3.1305
51	JAGUAR	S–TYPE	38	12319	3.0847
52	TOYOTA	CELICA	79	25683	3.0760
53	FORD MOTOR CO	MERCURY SABLE	322	105415	3.0546
54	GENERAL MOTORS	PONTIAC GRAND PRIX	434	144654	3.0003
55	GENERAL MOTORS	CHEVROLET CAMARO	121	40383	2.9963
56	FORD MOTOR CO	FORD FOCUS	753	252987	2.9764
57	FORD MOTOR CO	LINCOLN LS	153	51704	2.9592
58	GENERAL MOTORS	CHEVROLET CORVETTE	99	33586	2.9477
59	DAEWOOD	LANOS	19	6452	2.9448
60	DAIMLER CHRYSLER	CHRYSLER VOYAGER	120	41348	2.9022
61	HYUNDAI	SONATA	225	80049	2.8108
62	BMW	7	50	18222	2.7439
63	GENERAL MOTORS	PONTIAC FIREBIRD/FORMULA	81	29687	2.7285
64	FORD MOTOR CO	FORD TAURUS	842	321556	2.6185
65	FORD MOTOR CO	MERCURY MOUNTAINEER	196	77787	2.5197
66	DAIMLER CHRYSLER	JEEP CHEROKEE/GRAND	533	211786	2.5167
67	HYUNDAI	ELANTRA	299	118962	2.5134
68	JAGUAR	XKR	4	1595	2.5078

PRELIMINARY REPORT OF THEFT RATES FOR 2002 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2002—Continued

	Manufacturer	Make/model (line)	Thefts 2002	Production (Mfr's) 2002	2002 Theft rate (per 1000 vehicles produced)
69	HONDA	PASSPORT	15	5999	2.5004
70	TOYOTA	TUNDRA PICKUP	66	26442	2.4960
71	GENERAL MOTORS	BUICK REGAL	95	39124	2.4282
72	NISSAN	INFINITI G20	31	12788	2.4241
73	TOYOTA	4RUNNER	205	85126	2.4082
74	GENERAL MOTORS	OLDSMOBILE INTRIGUE	60	25008	2.3992
75	TOYOTA	LEXUS SC	61	25683	2.3751
76	GENERAL MOTORS	BUICK CENTURY	331	141818	2.3340
77	FORD MOTOR CO	MERCURY GRAND MARQUIS	146	62648	2.3305
78	FORD MOTOR CO	FORD EXPLORER	1419	610268	2.3252
79	NISSAN	XTERRA	231	99887	2.3126
80	MAZDA	626	113	49181	2.2976
81	GENERAL MOTORS	CADILLAC DEVILLE	209	91057	2.2953
82	SUZUKI	AERIO	31	13666	2.2684
83	HONDA	ACURA 3.2 CL	13	5749	2.2613
84	GENERAL MOTORS	SATURN LS	191	84966	2.2480
85	MAZDA	PROTEGE	219	97882	2.2374
86	DAIMLER CHRYSLER	CHRYSLER PT CRUISER	377	169559	2.2234
87	HONDA	ACURA INTEGRA	95	42809	2.2192
88	TOYOTA	RAV4	212	96489	2.1971
89	ISUZU	AXIOM	40	18280	2.1882
90	TOYOTA	CAMRY/SOLARA	1027	472030	2.1757
91	MERCEDES-BENZ	208 (CLK–CLASS)	43	20199	2.1288
92	JAGUAR	XJ8	5	2354	2.1240
93	FORD MOTOR CO.	FORD RANGER PICKUP	499	238558	2.0917
94	KIA MOTORS	SPORTAGE	97	46883	2.0690
95	DAIMLERCHRYSLER	JEEP LIBERTY	429	207991	2.0626
96	DAEWOO	NUBIRA	11	5351	2.0557
97	GENERAL MOTORS	PONTIAC BONNEVILLE	87	42664	2.0392
98	VOLVO	C70	7	3454	2.0266
99	HYUNDAI	XG	38	18842	2.0168
100	TOYOTA	ECHO	65	32495	2.0003
101	DAIMLERCHRYSLER	JEEP WRANGLER	133	66565	1.9980
102	NISSAN	FRONTIER PICKUP	181	90964	1.9898
103	GENERAL MOTORS	CADILLAC ELDORADO	14	7047	1.9867
104	MERCEDES-BENZ	215 (CL–CLASS)	10	5062	1.9755
105	MERCEDES-BENZ	220 (S–CLASS)	53	26918	1.9689
106	DAEWOO	LEGANZA	11	5593	1.9667
107	TOYOTA	TACOMA PICKUP	315	162322	1.9406
108	GENERAL MOTORS	CHEVROLET TRACKER	88	45793	1.9217
109	BMW	3	192	102574	1.8718
110	GENERAL MOTORS	CHEVROLET IMPALA	375	201467	1.8613
111	TOYOTA	LEXUS LS	50	27162	1.8408
112	FORD MOTOR CO	FORD ESCAPE	291	159322	1.8265
113	NISSAN	INFINITI QX4	29	15943	1.8190
114	SUBARU	IMPREZA	108	59391	1.8185
115	NISSAN	PATHFINDER	107	59409	1.8011
116	GENERAL MOTORS	CHEVROLET S10/T10 PICKUP	251	139521	1.7990
117	MAZDA	B–SERIES PICKUP	40	22275	1.7957
118	VOLKSWAGEN	GOLF–GTI	55	31640	1.7383
119	GENERAL MOTORS	CHEVROLET ASTRO VAN	67	39246	1.7072
120	HONDA	S2000	17	10049	1.6917
121	GENERAL MOTORS	GMC SONOMA PICKUP	66	39292	1.6797
122	HONDA	ACCORD	702	419398	1.6738
123	VOLVO	S40	23	13980	1.6452
124	MAZDA	MX–5 MIATA	22	13544	1.6243
125	VOLVO	S80	25	15851	1.5772
126	HONDA	ACURA 3.2 TL	95	60860	1.5610
127	ISUZU	RODEO	65	41996	1.5478
128	DAIMLERCHRYSLER	CHRYSLER TOWN & COUNTRY MPV	202	130937	1.5427
129	HONDA	CIVIC	500	329778	1.5162
130	JAGUAR	VANDEN PLAS/SUPER V8	3	1981	1.5144
131	MERCEDES–BENZ	170 (SLK–CLASS)	12	7954	1.5087
132	VOLKSWAGEN	JETTA	218	144790	1.5056
133	GENERAL MOTORS	SATURN SL	221	148514	1.4881
134	GENERAL MOTORS	CHEVROLET TRAILBLAZER	375	253249	1.4808
135	FORD MOTOR CO	MERCURY COUGAR	35	24485	1.4294
136	AUDI	TT/QUATTRO	14	9812	1.4268

PRELIMINARY REPORT OF THEFT RATES FOR 2002 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2002—Continued

	Manufacturer	Make/model (line)	Thefts 2002	Production (Mfr's) 2002	2002 Theft rate (per 1000 vehicles produced)
137	FORD MOTOR CO	FORD CROWN VICTORIA	32	22564	1.4182
138	PORSCHE	911	17	12034	1.4127
139	TOYOTA	LEXUS GS	25	17863	1.3995
140	FORD MOTOR CO	FORD WINDSTAR VAN	204	146274	1.3946
141	GENERAL MOTORS	BUICK PARK AVENUE	42	31913	1.3161
142	NISSAN	INFINITI 135	40	30604	1.3070
143	PORSCHE	BOXSTER	13	9975	1.3033
144	BMW	5	51	39445	1.2929
145	MERCEDES–BENZ	203 (C–CLASS)	91	70688	1.2873
146	VOLKSWAGEN	EUROVAN/CAMPER	7	5472	1.2792
147	JAGUAR	X–TYPE	44	35659	1.2339
148	HYUNDAI	SANTA FE	99	82824	1.1953
149	VOLVO	S60	48	40884	1.1741
150	JAGUAR	XJR	1	853	1.1723
151	TOYOTA	MR2 SPYDER	6	5335	1.1246
152	VOLVO	V40	3	2680	1.1194
153	GENERAL MOTORS	PONTIAC AZTEK	20	17886	1.1182
154	AUDI	A4/QUATTRO	41	36870	1.1120
155	GENERAL MOTORS	SATURN SC	48	43213	1.1108
156	SAAB	9–3	20	18055	1.1077
157	VOLKSWAGEN	CABRIO	13	11749	1.1065
158	GENERAL MOTORS	BUICK LESABRE	148	137737	1.0745
159	KIA MOTORS	SEDONA VAN	53	49731	1.0657
160	VOLKSWAGEN	PASSAT	99	93812	1.0553
161	GENERAL MOTORS	GMC ENVOY	112	108650	1.0308
162	MERCEDES-BENZ	210 (E–CLASS)	310	30368	1.0208
163	TOYOTA	AVALON	69	67772	1.0181
164	TOYOTA	PRIUS	23	22737	1.0116
165	FORD MOTOR CO	LINCOLN CONTINENTAL	19	18804	1.0104
166	VOLKSWAGEN	NEW BEETLE	56	56045	0.9992
167	TOYOTA	SIENNA VAN	82	85417	0.9600
168	NISSAN	QUEST VAN	20	21099	0.9479
169	TOYOTA	LEXUS RX	69	73049	0.9446
170	LAND ROVER	FREELANDER	15	16268	0.9221
171	GENERAL MOTORS	GMC SAFARA VAN	9	9887	0.9103
172	FORD MOTOR CO	FORD MUSTANG	705	775153	0.9095
173	MAZDA	TRIBUTE	45	49561	0.9080
174	GENERAL MOTORS	OLDSMOBILE BRAVADA	25	28658	0.8724
175	HONDA	ACURA 3.5 RL	14	16449	0.8511
176	GENERAL MOTORS	BUICK RENDEZVOUS	66	7573	0.8508
177	GENERAL MOTORS	CHEVROLET VENTURE VAN	71	84116	0.8441
178	TOYOTA	HIGHLANDER	90	110530	0.8143
179	TOYOTA	LEXUS ES	57	70517	0.8083
180	GENERAL MOTORS	PONTIAC MONTANA VAN	35	45558	0.7683
181	VOLVO	V70	9	12144	0.7411
182	HONDA	ACURA MDX	36	48998	0.7347
183	DAIMLERCHRYSLER	DODGE DAKOTA PICKUP	106	145238	0.7298
184	SUBARU	FORESTER	39	55114	0.7076
185	QUANTUM TECH	CHEVROLET CAVALIER	1	1483	0.6743
186	AUDI	A6/QUATTRO	14	21328	0.6564
187	FORD MOTOR CO	MERCURY VILLAGER VAN	12	18364	0.6535
188	GENERAL MOTORS	SATURN VUE	21	34578	0.6073
189	SUBARU	LEGACY/OUTBACK	47	88790	0.5293
190	MAZDA	MPV VAN	13	25122	0.5175
191	HONDA	INSIGHT	1	2006	0.4985
192	FORD MOTOR CO	FORD THUNDERBIRD	14	28639	0.4888
193	BMW	MINI COOPER	8	17033	0.4697
194	GENERAL MOTORS	OLDSMOBILE SILHOUETTE VAN	11	23863	0.4610
195	HONDA	CR–V	62	138061	0.4491
196	BMW	M/Z3	8	18768	0.4263
197	SAAB	9–5	6	15339	0.3912
198	HONDA	ODYSSEY VAN	58	148857	0.3896
199	VOLVO	XC	8	20725	0.3860
200	GENERAL MOTORS	SATURN LW	4	11273	0.3548
201	FORD MOTOR CO	FORD THINK NEIGHBOR	2	6613	0.3024
202	ASTON MARTIN	VANQUISH	0	127	0.0000
203	ASTON MARTIN	VANTAGE	0	265	0.0000
204	AUDI	A8/QUATRRO/L	0	672	0.0000

PRELIMINARY REPORT OF THEFT RATES FOR 2002 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2002—Continued

	Manufacturer	Make/model (line)	Thefts 2002	Production (Mfr's) 2002	2002 Theft rate (per 1000 vehicles produced)
205	AUDI	ALLROAD/QUATTRO	0	5085	0.0000
206	AUDI	S6/AVANT	0	884	0.0000
207	BMW	Z8	0	687	0.0000
208	DAIMLERCHRYSLER	DODGE VIPER	0	1355	0.0000
209	FERRARI	360	0	684	0.0000
210	FERRARI	456	0	20	0.0000
211	FERRARI	575	0	208	0.0000
212	GENERAL MOTORS	FUNERAL COACH/HEARSE	0	1907	0.0000
213	JAGUAR	XJS	0	1000	0.0000
214	LAMBORGHINI	MURCIELAGO	0	98	0.0000
215	LOTUS	ESPRIT	0	100	0.0000
216	MASERATI	COUPE/SPIDER	0	492	0.0000
217	MITSUBISHI	NATIVA[2]	0	1513	0.0000
218	ROLLS ROYCE	PARK WARD	0	12	0.0000
219	ROLLS ROYCE	SILVER SERAPH	0	63	0.0000
220	ROLLS-ROYCE	BENTLEY ARNAGE	0	139	0.0000
221	ROLLS-ROYCE	BENTLEY AZURE	0	101	0.0000
222	ROLLS-ROYCE	BENTLEY CONTINENTAL R	0	31	0.0000
223	ROLLS-ROYCE	BENTLEY CONTINENTAL T	0	2	0.0000
224	ROLLS-ROYCE	BENTLEY CORNICHE	0	37	0.0000

[1] This vehicle was manufactured under the Chrysler nameplate for sale in a U.S. Territory only (Guam, American Samoa, Puerto Rico) and the Virgin Islands (St. Thomas and St. Croix).
[2] This vehicle was manufactured for sale only in Puerto Rico and represents the U.S. version of the Montero Sport line.

Issued on: April 1, 2004.

Stephen R. Fratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–7793 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2003–15715; Notice 2]

RIN 2127–AH73

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Extension of comment period.

SUMMARY: NHTSA received a letter asking us to extend the comment period for our request for comments notice regarding frontal offset testing. The notice intended to inform the public about recent testing the agency has conducted in consideration of whether to propose a high speed frontal offset crash test requirement. To provide interested persons additional time to prepare comments, we are extending the end of the comment period from April 5, 2004 to July 5, 2004.

DATES: Comments must be received by July 5, 2004.

ADDRESSES: You may submit comments (identified by the docket number set forth above) by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site. Please note, if you are submitting petitions electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[1]
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. All comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Privacy Act heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://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:

The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 can be contacted.

For non-legal issues: Mr. John Lee, Office of Crashworthiness Standards, NVS–112. Telephone: (202) 366–2264. Fax: (202) 493–2739. Electronic mail: *jlee@nhtsa.dot.gov*.

For legal issues: Rebecca MacPherson, Office of the Chief Counsel, NCC–112. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: On February 3, 2004, NHTSA published in the **Federal Register** (69 FR 5108) a request for comments notice regarding frontal offset testing. The notice

[1] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

intended to inform the public about recent testing the agency has conducted in consideration of whether to propose a fixed offset deformable barrier crash test in Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant crash protection," for improving frontal crash protection. In fiscal year 1997, the U.S. House of Representatives directed the National Highway Traffic Safety Administration (NHTSA) to work toward "establishing a federal motor vehicle safety standard for frontal offset crash testing." Since then, frontal offset crash tests have been adopted for New Car Assessment Programs in several countries worldwide. Additionally, in the U.S., the Insurance Institute for Highway Safety began a consumer crashworthiness ratings program in 1995 that included a fixed offset deformable barrier crash test.

Based on the agency's testing as of January 2004, we preliminarily determined in the February notice that the benefits from such a crash test could lead to an annual reduction in approximately 1,300 to 8,000 MAIS 2+ lower extremity injuries. NHTSA also conducted vehicle-to-vehicle crash tests to investigate the potential for disbenefits from a fixed offset deformable barrier crash test requirement. The testing demonstrated that, for some sport utility vehicles, design changes that improved their performance in high speed frontal offset crash tests may also result in adverse effects on the occupants of their collision partners. The agency requested comments on additional tests the agency planned to conduct to further evaluate the potential disbenefits, and posed some alternative strategies that could be coupled with a frontal offset crash test requirement. We established a comment closing date of April 5, 2004.

On March 19, 2004, the Alliance of Automobile Manufacturers (Alliance) requested a 90-day extension of the comment period, to July 5, 2004. The Alliance noted that NHTSA has not placed its preliminary safety benefits analysis and complete submission of crash test data in the public docket. For that reason, it stated that the public cannot address these issues. The Alliance further stated that the public should have an adequate period of time to comment after these analyses have been submitted to the docket. It stated that these actions cannot occur within the currently specified 60-day comment period.

The Alliance also stated that its member companies would like to provide the agency with additional data and analyses on issues discussed in the request for comments notice. Specifically, the Alliance discussed reviewing field data on the causes and sources of lower-extremity injuries, gathering and evaluating manufacturer crash test and dummy lower-extremity injury data, and evaluating existing crash test alternatives to the fixed offset deformable barrier tests to assess both lower extremity safety benefits and potential crash compatibility safety disbenefits. The Alliance stated that it requires an additional 90 days to compile and analyze this information.

After considering the Alliance's request, we have decided that it would be in the public's interest to extend the comment period to obtain as much data as possible. The Alliance may provide additional tests and analyses to better understand the issues cited in the request for comments notice. There is also a public interest in having the views of the public be as informed as possible. While we note that the additional NHTSA crash tests have since been completed and docketed during the original 60-day comment period, we acknowledge that insufficient time was allocated for the public to analyze and comment on the results of these tests. We have also recently docketed additional details regarding our preliminary safety benefits estimations. Therefore, we believe that providing additional time for the public to analyze these sources of information, in addition to any additional analyses provided by the Alliance, will result in more helpful comments.

Privacy Act: Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: April 1, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–7795 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI77

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis for the proposed designation of critical habitat for *Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch) under the Endangered Species Act of 1973, as amended. We also are reopening the public comment period for the proposal to designate critical habitat for this species to allow all interested parties to comment on the proposed rule and the associated draft economic analysis. Comments previously submitted on the proposed rule need not be resubmitted as they have been incorporated into the public record as part of this reopening of the comment period. and will be fully considered in preparation of the final rule.

DATES: We will accept all comments received on or before May 6, 2004. Any comments that we receive after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposed rule by any one of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92009.

(2) You may hand-deliver written comments to our office, at the address given above, or fax your comments to (760) 431–9618.

(3) You may send comments by electronic mail (e-mail) to *fw1pmv@r1.fws.gov*. Please see the Public Comments Solicited section below for file format and other information about electronic filing. In the event that our Internet connection is not functional, please submit your comments by the alternate methods mentioned above.

Comments and materials received, as well as supporting documentation used in preparation of the proposed critical habitat rule, will be available for public inspection, by appointment, during normal business hours at the above address. You may obtain copies of the draft economic analysis for *Astragalus magdalenae* var. *peirsonii* by contacting the Carlsbad Fish and Wildlife Office at the above address. The draft economic analysis and the proposed rule for critical habitat designation also are available on the Internet at *http://www.carlsbad.fws.gov/*. In the event that our internet connection is not functional, please obtain copies of documents directly from the Carlsbad Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the address listed above (telephone (760) 431–9440 or facsimile (760) 431–9618).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the economic analysis or the proposed rule. We do not anticipate extending or reopening the comment period on the proposed rule after this comment period ends (*see* **DATES**). We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of critical habitat designation will outweigh any threats to the species resulting from designation;

(2) Specific information on the amount and distribution of *Astragalus magdalenae* var. *peirsonii* and its habitat, and which habitat is essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject area and their possible impacts on proposed habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families,

(5) Whether the economic analysis identifies all State and local costs. If not, what costs are overlooked;

(6) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat, including whether it is a reasonable assumption that, even in the absence of regulatory restrictions from this designation, visitation at the Imperial Sand Dunes Recreation Area will not increase between 2013 and 2024, and if not, what rate of increase in visitation to the area is likely;

(7) Whether the economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation;

(8) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(9) Whether the economic analysis appropriately identifies all costs that could result from the designation; and

(10) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

All previous comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning this rule by any one of several methods (*see* **ADDRESSES** section). Please submit Internet comments to *fw1pmv@r1.fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: Peirson's Milk-vetch Critical Habitat" in your e-mail subject header, and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Astragalus magdalenae var. *peirsonii* is a stout, short-lived perennial member of the Fabaceae (Legume Family). Plants develop extremely long tap roots (Barneby 1964) that penetrate deeply to the more moist sand and anchor the plants in the shifting dunes. *A. magdalenae* var. *peirsonii* occurs on open sand dunes in a vegetation community referred to as psammophytic scrub (Westec 1977); desert psammophytic scrub is described as being distinguished by a rather large number of plants restricted entirely or largely to an active dune area (Thorne 1982).

Currently, the only known population of *Astragalus magdalenae* var. *peirsonii* remaining in the United States is located in the Algodones Dunes of Imperial County, California. This dune field is one of the largest in the United States, and one of the most popular for Off-Highway Vehicle (OHV) use. The Algodones Dunes are often referred to as the Imperial Sand Dunes, a designation derived from their inclusion in the Imperial Sand Dunes Recreation Area (ISDRA) established by the Bureau of Land Management (BLM). Virtually all lands in the Algodones Dunes are managed by BLM. However, the State of California and private parties own some small inholdings in the dune area. Additional data on the biology and distribution of *A. magdalenae* var. *peirsonii* and impacts thereto can be found in the proposed rule to designate critical habitat for the taxon, published in the **Federal Register** on August 5, 2003 (68 FR 46143).

We listed *Astragalus magdalenae* var. *peirsonii* as threatened on October 6, 1998 (63 FR 53596), due to threats of increasing habitat loss from OHV use and associated recreational development, destruction of plants, and lack of protection afforded the plant under State law. In the **Federal Register** of August 5, 2003, we proposed to designate a total of approximately 52,780 acres (ac) (21,359 hectares (ha)) of critical habitat in Imperial County, California (68 FR 46143).

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of

a listed species and that may require special management considerations or protection. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We have prepared a draft economic analysis for the proposal to designate certain areas as critical habitat for *Astragalus magdalenae* var. *peirsonii*. This analysis considers the potential economic effects of designating critical habitat for *A. magdalenae* var. *peirsonii*. It also considers the economic effects of protective measures taken as a result of listing the species under the Act, and other Federal, State, and local laws that aid habitat conservation in areas proposed for designation.

Limitations on future OHV access within the ISDRA will depend on the outcome of future management decisions. Future impacts could range from no effects to complete closure of critical habitat areas within the eight distinct BLM management areas. Pre-critical habitat economic benefits enjoyed by OHV users within the proposed critical habitat designation range from $0 for the North Algodones Wilderness (currently closed to OHV use) and Dune Buggy Flats management area (not proposed for designation) to $4.9 million per year for that portion of the Glamis management area proposed for designation. If all of the areas proposed for designation within the ISDRA were closed to OHV use, the annual consumer surplus impact would range from $8.9 million per year to $9.9 million per year.

While future closures of areas are not anticipated to occur by either the Service or BLM, in the past the ISDRA has experienced closures of areas to OHV use to provide protection to *Astragalus magdalenae* var. *peirsonii*. Given the uncertainty of future management decisions, the economic analysis provides estimates of the potential total economic contribution of each ISDRA management area and that portion of each management area proposed as critical habitat. These total economic contribution estimates represent the upper bound of impacts that could result from closure of these areas to OHV use.

We solicit data and comments from the public on the draft economic analysis, as well as on all aspects of the proposed rule to designate critical habitat for *Astragalus magdalenae* var. *peirsonii*. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Author

The primary author of this document is the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section).

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 30, 2004.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–7694 Filed 4–5–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI78

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Astragalus jaegerianus* (Lane Mountain milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Astragalus jaegerianus* (Lane Mountain milk-vetch). Approximately 29,522 acres (ac) (11,947 (ha)) of land fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in the Mojave Desert in San Bernardino County, California.

Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. If this proposal is made final, section 7(a)(2) of the Act requires that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of critical habitat. The regulatory effect of the critical habitat designation does not extend beyond those activities funded, permitted, or carried out by Federal agencies. State or private actions, with no Federal involvement, are not affected.

Section 4 of the Act requires us to consider economic, national security, and other relevant impacts when specifying any particular area as critical habitat. We will conduct an analysis of the economic impacts of designating these areas, in a manner that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Assn* v. *USFWS*. We hereby solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal prior to final designation to incorporate or address new information received during the comment period.

DATES: We will accept comments until June 7, 2004. Public hearing requests must be received by May 21, 2004.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA, 93003.

2. You may also send comments by electronic mail (e-mail) to *FW1Lanemv@r1.fws.gov*. In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

3. You may hand-deliver comments to our Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

All comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003 (telephone (805) 644–1766; facsimile (805) 644–3958).

SUPPLEMENTARY INFORMATION:

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Endangered Species Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7." Currently, only 445 species or 36 percent of the 1,244 listed species in the United States under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with NEPA, all are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Public Comments Solicited

We intend any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation, specifically, any lands being considered under a conservation plan;

(2) With specific reference to the recent amendments to sections 4(b)(2) of the Act, we request information regarding impacts to national security associated with proposed designation of critical habitat;

(3) Specific information on the amount and distribution of *Astragalus jaegerianus* habitat, and what habitat is essential to the conservation of the species and why;

(4) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic or other potential impacts resulting from the proposed designation—in particular, any impacts on small entities; and

(6) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES** section). In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above. Please submit Internet comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: [RIN 1018–AI78]" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805–644–1766. Please note that the Internet address "*FW1Lanemv@r1.fws.gov*" will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or

address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Background

We listed *Astragalus jaegerianus* (Lane Mountain milk-vetch) as threatened on October 6, 1998 (63 FR 53596) due to threats of increasing habitat loss and degradation. It is our intent, in this proposed rule, to reiterate and discuss only those topics directly relevant to the development and designation of critical habitat or relevant information obtained since the final listing. Please refer to our final listing rule for a more detailed discussion of the plant's taxonomic history and physical description.

Astragalus jaegerianus (Lane Mountain milk-vetch) is a member of the pea family (Fabaceae) that is restricted in its range to a portion of the west Mojave Desert that is north of Barstow, in San Bernardino County, California. The plant overwinters as a taproot. The stems often grow in a zigzag pattern, usually up through low bushes, referred to in this proposed rule as host shrubs.

This species can be considered a hemicryptophyte (partially hidden), because it is usually often found growing within the canopy of a host shrub. Like other species of *Astragalus*, the roots of *A. jaegerianus* contain nodules that fix nitrogen. Gibson *et al.* (1998) postulate that *A. jaegerianus* may have a mutually beneficial relationship with the host shrub, wherein the host shrub provides trellis-like support for *A. jaegerianus*, and benefits from higher levels of soil nitrogen derived from the litter and roots of *A. jaegerianus*.

Presumably, as with other perennial species in the Mojave Desert, the plant begins regrowth in the late fall or winter, once sufficient soil moisture is available. Individuals go dormant in the late spring or summer when soil moisture has been depleted (Bagley 1999). Blooming typically occurs in April and May. However, if climatic conditions are unfavorable, the plants may dessicate prior to flowering or setting seed. Therefore, substantial contributions to the seedbank may occur primarily in climatically favorable years.

Production of pods and the number of seeds per pod can be highly variable, both in the field and in greenhouse conditions. Seed pods can contain as many as 18 seeds, but more typically 4 to 14 seeds (Sharifi *et al.* 2003). In the field, seeds that do not germinate during the subsequent year become part of the seed bank. Seed germination rates in the field may resemble the low germination rate of 5 percent that is observed in germination trials of unscarified (outer cover is broken) seed (Sharifi in litt. 2004).

Seeds collected from *Astragalus jaegerianus* range in size from 1.5 to over 5.0 milligrams in weight (Sharifi in litt. 2003). The relatively large size of these seed compared to many desert annual species would make them an attractive food source to ants and other large insects, small mammals, and birds (Brown *et al.* 1979). These animal species would also be the most likely vectors to disperse *A. jaegerianus* seeds within and between populations. Sharifi (pers. comm. 2004) confirmed the presence of *A. jaegerianus* seeds within native ant coppices.

Limited observations on *Astragalus jaegerianus* pollinators were carried out in 2003 (Kearns 2003). Observations were made on two plants in one population for seven days. Although 30 different insect species were observed visiting flowers in the area, only 4 visited *A. jaegerianus* flowers. The most frequent pollinator was *Anthidium dammersi*, a solitary bee in the megachilid family (Megachilidae). *Anthidium dammersi* occurs in the Mojave and Colorado deserts of California, Nevada, and Arizona (Kearns 2003), and will fly up to 0.6 mi (1 km) away from their nest; although if floral resources are abundant, they will decrease their flight distances accordingly (Doug Yanega, University of California Riverside, pers. comm. 2003). Kearns (2003) found that the *Anthidium* individuals he inspected carried pollen primarily from phacelia (*Phacelia distans*) (82 percent of individuals) and *Astragalus jaegerianus* (64 percent). The three occasional visitors to *A. jaegerianus* were a hover fly (*Eupeodes volucris*), a large anthophrid bee (*Anthophora sp.*), and the white-lined sphinx moth (*Hyles lineata*). The extent to which *Astragalus jaegerianus* relies on these and other pollinators to achieve seed set is not yet known. However, in a greenhouse experiment, 25 percent of pollinated *A. jaegerianus* flowers set seed, while only 5 percent of nonpollinated flowers set seed (Sharifi pers. comm. 2004).

Although the aboveground portion of the plant dies back each year, individuals of *Astragalus jaegerianus* persist as a perennial rootstock through the dry season. The perennial rootstock may also allow *Astragalus jaegerianus* to survive occasional dry years, while longer periods of drought might be endured by remaining dormant (Beatley in Bagley 1999). In another federally listed species, Osterhout milk-vetch (*Astragalus osterhoutii*), which occurs in sagebrush steppe habitat in Colorado, individuals have remained dormant for up to 4 years (Dawson in litt. 1999).

Although a substantial *Astragalus jaegerianus* seedbank most likely exists, establishment of new individuals may not occur with great frequency, and may pose a large bottleneck for the continued persistence of the species. In addition to the low seed germination rates discussed earlier, several other observations contribute to this theory. First, we have some indication that individuals may have a long life span; in one long-term plot, individuals have been tracked for a period of 13 years. Out of a total of 9 individuals, 1 has persisted over a period of 13 years, 1 has persisted 12 years, 1 has persisted 10 years, 1 has persisted 6 years, 1 has persisted 5 years, and 2 have persisted 3 years (Rutherford in litt. 2004). Secondly, very few seedlings have been observed. During the extensive surveys of 2001, approximately 2 percent of the 4,964 individuals observed were thought to be seedlings (Charis 2002). However, the actual number of seedlings may have been even lower, because resprouts from established individuals were most likely mistaken for seedlings (Sharifi pers. comm. 2004). Because the population of *Astragalus jaegerianus* in any given year is comprised primarily of established individuals, maintaining the seed bank ensures that the populations are replenished with new individuals.

After the early collections in 1939 and 1941, the plant was not collected again until it was rediscovered in 1985 at the sites referred to as Brinkman Wash, Montana Mine, and Paradise Wash. Throughout the 1990s, hundreds more plants were located in these areas (Lee and Ro Consulting Engineers 1986, Brandt *et al.* 1993, Prigge 2000a) in surveys sponsored by the Department of the Army's (Army) National Training Center at Fort Irwin (NTC). Surveys in 1999 established that the Brinkman Wash—Montana Mine site supports one large continuous population (Prigge *et al.* 2000a). In 1992, the third and southernmost population was found 9 mi (14 km) to the south, on Coolgardie Mesa, a few miles west of Lane

Mountain; this site closely approximates the type locality.

Extensive surveys funded by the Army were conducted in 2001 (Charis 2002). The 2001 surveys contributed greatly to our knowledge of the overall distribution and abundance of *Astragalus jaegerianus* in the three populations. In addition, a fourth population was located during these surveys on NTC lands in an area referred to as Goldstone. Approximately 20 percent of this population is on lands leased by the Army to the National Aeronautics and Space Administration (NASA) for tracking facilities. Much of the most recent information included in this proposed rule is taken from the Army survey report (Charis 2002).

Individuals of *Astragalus jaegerianus* are concentrated in four geographically distinct areas. In this rule, a population refers to a concentration of *Astragalus* individuals, a population site refers to the land that supports the population, and a unit refers to specific sites that are being considered for critical habitat designation. The four populations of *A. jaegerianus* are arrayed more or less linearly along a 20-mile-long axis that trends in a northeasterly-to-southwesterly direction. The names of the four populations, from northeast to southwest, and land ownership are as follows—the Goldstone population occurs on NTC, lands including a portion leased to NASA; the Brinkman Wash-Montana Mine population occurs entirely on NTC lands; the Paradise Wash population occurs primarily on Army lands, with a small portion of the remaining population occurring on Bureau lands intermixed with private lands along the southwestern fringe of the population; the Coolgardie population occurs primarily on Bureau-managed lands, with a number of small privately owned parcels scattered within.

Based on the information available, including historic records and current location information, there is nothing to suggest that *Astragalus jaegerianus* was ever more widespread than currently known. The Army surveys in 2001 (Charis 2002) included reconnaissance surveys on habitat that appeared suitable but outside the known range of *A. jaegerianus*, including the Mount General area near Barstow and in the Alvord Mountains 20 mi (32 km) to the east. In addition, since 1996, rare plant surveys have been conducted on the Naval Air Weapons Station at China Lake 6 miles (4.8 km) to the northwest of the known distribution (Charis 2002; Silverman in litt. 2003). None of these other surveys have resulted in the location of any other populations.

Astragalus jaegerianus is most frequently found on shallow soils derived from Jurassic or Cretaceous granitic bedrock. A small portion of the individuals located to date occur on soils derived from diorite or gabbroid bedrock (Charis 2002). In one location on the west side of the Coolgardie site, plants were found on granitic soils overlain by scattered rhyolitic cobble, gravel, and sand. Soils tend to be shallower immediately adjacent to milk-vetch plants than in the surrounding landscape; at the Montana Mine site, rotten, highly weathered granite bedrock was reached within 2 in (6 cm) of the soil surface near *A. jaegerianus* plants (Fahnestock 1999). The topography where *A. jaegerianus* most frequently occurs is on low ridges and rocky low hills where bedrock is exposed at or near the surface and the soils are coarse or sandy (Prigge 2000b; Charis 2002). Most of the individuals found to date occur between 3,100 and 4,200 feet (ft) (945 to 1,280 meters (m)) in elevation (Charis 2002). At lower-lying elevations, the alluvial soils appear to be too fine to support *A. jaegerianus*, and at higher elevations the soils may not be developed enough to support *A. jaegerianus* (Prigge 2000b; Charis 2002).

Prigge (pers. comm. 2003) examined and found no relationship between the abundance and distribution of *Astragalus jaegerianus* and levels of micronutrients or heavy metals, such as selenium, in the soil. Another focus of pending research will be on measuring transpiration rates and gas exchange rates for *A. jaegerianus*; these rates would be an indicator as to whether the taproots of *A. jaegerianus* are tapping into a water source stored within fractured granite bedrock, thus allowing it to utilize water not available to other plants within the community (Prigge *et al.* 2002).

At the landscape level, the plant community within which *Astragalus jaegerianus* occurs can be described as Mojave mixed woody scrub (Holland 1998), Mojave creosote bush scrub (Holland 1988; Cheatham and Haller 1975; Thorne 1976), or creosote bush series (Sawyer and Keeler-Wolf 1995). These broad descriptions, however, are lacking in detail that is useful in describing the communities where *A. jaegerianus* is found. While creosote bush (*Larrea tridentata*) is present in the landscape, its presence and abundance is not as extensive in the specific areas where *A. jaegerianus* occurs, presumably because these soils are shallower than optimal depth for creosote bush.

Data gathered from the four sites that support *Astragalus jaegerianus* populations have been more useful in describing the plant community that *A. jaegerianus* grows in. Common to all four sites is the remarkably high diversity of desert shrub species, while the relative frequency of these species varies slightly from site to site. The shrub species that occur in the highest densities at *A. jaegerianus* sites include turpentine bush (*Thamnosma montana*), white bursage (*Ambrosia dumosa*), Mormon tea (*Ephedra nevadensis*), Cooper goldenbush (*Ericameria cooperi* var. *cooperi*), California buckwheat (*Eriogonum fasciculatum* var. *polifolium*), brittlebush (*Encelia farinosa* or *E. actoni*), desert aster (*Xylorrhiza tortifolia*), goldenheads (*Acamptopappus spherocephalus*), spiny hop-sage (*Grayia spinosa*), cheesebush (*Hymenoclea salsola*), winter fat (*Kraschenninikovia lanata*), and paper bag bush (*Salazaria mexicana*).

Astragalus jaegerianus utilizes a variety of species as host shrubs. Individuals of *A. jaegerianus* are rarely observed on bare ground, and more frequently within dead shrubs, leading to speculation that the milk-vetch may have outlived its host shrub. Host shrubs may also be important in providing appropriate microhabitat conditions for *A. jaegerianus* seed germination and seedling establishment (Charis 2003).

At the Brinkman-Montana Mine site, Prigge *et al.* (2000b) showed that the difference between host shrub preference by *Astragalus jaegerianus* and the frequency with which these shrubs occurred in the plant community was statistically significant, indicating that some shrubs are more suitable as hosts than others. During Army surveys in 2001, host shrubs were noted for 4,899 individuals of *A. jaegerianus*. Six shrub species (*Thamnosma montana, Ambrosia dumosa, Eriogonum fasciculatum* var. *polifolium, Ericameria cooperi* var. *cooperi, Ephedra nevadensis*) and dead shrubs accounted for 75 percent of the host shrub records.

The cumulative total number of *Astragalus jaegerianus* individuals found from all surveys to date is approximately 5,800 (Charis 2002). Charis (2002) attempted to extrapolate the total number of individuals by factoring in the amount of intervening suitable habitat between transects in confirmed occupied habitat, along with an "observability" factor ranging from 30 percent to 70 percent; this results in estimations of the total number of individuals ranging from 20,524 to 47,890. The actual number of individuals observed during the surveys

at the four population sites during the climatically favorable year of 2001 are as follows—Goldstone, 555; Brinkman Wash-Montana Mine, 1,487; Paradise Wash, 1,667; Coolgardie, 2,014 (Charis 2002). Low numbers of individuals observed in prior and subsequent years (2000, 2002, and 2003) suggest that this species may well follow the pattern of other perennial desert species that rely on favorable climatic conditions that do not occur with any predictable frequency (Beatley 1974, Kearns 2003; B. Prigge, pers. comm. 2003).

The longterm viability of *Astragalus jaegerianus* depends on numerous variables, including life history characteristics (*e.g.*, longevity), population characteristics (*e.g.*, rates of recruitment and mortality), and carrying capacity of the habitat. The need to maintain high-quality habitat for *A. jaegerianus* is important to its long-term persistence. Aside from the sandy granidiorite soils and the mixed desert scrub community which have been described in the previous sections, we believe that the other characteristics important to ensure the maintenance of the ecologic processes within *A. jaegerianus* habitat include habitat of sufficient size and quality to maintain pollinators; and habitat of sufficient size and quality to maintain seed dispersal mechanisms.

At the time *Astragalus jaegerianus* was listed as endangered in 1998, threats to the species included dry wash mining, recreational off-highway vehicle use, military maneuvers on Army lands at NTC and NTC expansion lands, and the lack of regulatory mechanisms that would offer formal protection for the species or its habitat. Stochastic extinction (extinction from random natural events) is also a concern, and could result from such events as flooding (that could wash substantial amounts of the seedbank into unsuitable habitat), prolonged drought (that could reduce the abundance of viable seed in the seed bank), or unforeseen events including wildfire, wildfire suppression activities, or pipeline breaks or repairs.

Since the final rule was published, new information concerning the status of *Astragalus jaegerianus* and the nature of its threats is available. The 2001 surveys have provided better information on the distribution of the species. The extent of the three populations that were previously known has been greatly expanded, and the fourth population (Goldstone) was discovered during these surveys. Also, the size of the populations as represented by the number of individuals that can be observed in a favorable climatic year is now known to be larger than was thought at the time of listing. In addition, a substantial change occurred in land management—on January 11, 2002, President George W. Bush signed the Fort Irwin Military Lands Withdrawal Act of 2001 (Pub. L. 107–107) into law. This legislation withdrew approximately 110,000 ac (44,516 ha) of land, formerly managed by the Bureau, for military use. Subsequent surveys and geographic information system (GIS) analysis indicated that the proposed expansion area covers 118,674 ac (48,026 ha). Military use of the withdrawn lands will not begin until compliance with the National Environmental Policy Act (NEPA) and a consultation pursuant to section 7(a)(2) of the Act with the Service have been completed.

Two of the four populations of *Astragalus jaegerianus* (Brinkman Wash—Montana Mine, Paradise Wash populations) occur almost entirely on withdrawn lands within the NTC expansion. The Army is proposing to establish two conservation areas for *A. jaegerianus*. The first conservation area will comprise 2,470 ac (1,000 ha) at the Goldstone site. The second conservation area, referred to as Paradise Valley Conservation Area, will comprise 4,302 ac (1,741 ha) along the southwestern boundary of NTC. Therefore, all of one and a portion of a second population of the three populations on NTC lands are in areas that will be placed in conservation areas.

Finally, since the early 1990s, the Bureau has acted as the lead agency in developing the West Mojave Plan (WMP); the planning area for this multiagency effort covers 9,360,000 ac (3,787,900 ha) of the western Mojave Desert. These lands include approximately 3,300,000 ac (1,335,477 ha) of lands administered by the Bureau, 3,000,000 ac (1,214,070 ha) of private lands, and 102,000 ac (41,278 ha) of State lands. The remaining lands lie within areas administered by the Department of Defense and National Park Service; these agencies are not formally part of the WMP. The draft environmental impact report/statement (EIR/S) for the WMP was published in May 2003. As part of the Bureau's preferred alternative, they propose to establish two conservation areas for *Astragalus jaegerianus*. The first conservation area, referred to as the West Paradise Conservation Area, will comprise 1,243 ac (503 ha), and will be contiguous with the Army's Paradise Valley Conservation Area along the southwestern boundary of NTC. This area is currently designated as land-use class L by the Bureau, which denotes limited use. The second is the Coolgardie Mesa Conservation Area (CMCA); it will comprise approximately 13,354 ac (5,404 ha) at the Coolgardie site. This area is currently designated as land-use class M by the Bureau, which denotes moderate use. Both conservation areas would be managed to maintain habitat for *A. jaegerianus* with the following proposed management prescriptions: Implement a minerals withdrawal, require a 5 to 1 mitigation ratio for land-disturbing projects, and limit total ground disturbance to 1 percent. Once the WMP is finalized, the County of San Bernardino will be the lead entity in preparing a draft Habitat Conservation Plan (HCP) that will address conservation measures that will be proposed for private lands within the area covered by the WMP.

The Bureau has also recently completed a consultation with the Service for a route designation project in the western Mojave Desert area. The project includes a proposal to reduce the number of roads within the proposed CMCA that are designated as open to travel; other roads will be proposed for closure and restoration (Service 2003a).

The impacts from military activities within the boundaries of NTC on *Astragalus jaegerianus* and its habitat will vary, depending on the type of terrain and the level and frequency of use. The Army (Charis 2003) anticipates the following types of impacts—individuals of *A. jaegerianus* could be killed or damaged through direct contact with wheeled and tracked vehicles, construction, digging and earth-moving activities, temporary bivouacs, helicopter landings, the movement of soldiers on foot, and other activities in the project area. Habitat for *A. jaegerianus* could be affected by substantially reducing or eliminating host plants within the project area, soil erosion and compaction, and the loss of cryptobiotic soil crusts that help stabilize the soil surface and assist with water transport to plant roots. Army (Charis 2003) anticipates that in "high-intensity" use areas, up to 100 percent of individuals and habitat could be lost; in "moderate-intensity" use areas, up to 60 percent of individuals could be lost; in "low-intensity" use areas, up to 20 percent of individuals and habitat could be lost; and in proposed conservation areas, the only loss of individuals or habitat expected to occur is from straying military vehicles or personnel. Windblown dust that has been loosened from the soil surface due to military activities may also affect *A. jaegerianus* by inhibiting photosynthesis and transpiration in individuals, altering suitable germination sites, and altering

the effectiveness of pollinator visits and of seed dispersal by wildlife species.

Other nonmilitary activities may also occur within NTC. Recently, a fiber-optic cable was installed through the Goldstone population. Although the installation consisted of trenching through *Astragalus jaegerianus* habitat, no individuals were affected (Service 2003b). Other activities not related to military training, such as road construction or maintenance activities, may be also be proposed in the future by the Army.

Previous Federal Action

The final rule listing *A. jaegerianus* as an endangered species was published on October 6, 1998 (63 FR 53596).

On November 15, 2001, our decision not to designate critical habitat for *Astragalus jaegerianus* and seven other plant and wildlife species was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *Norton* (Case No. 01–CV–2101–IEG (S.D.Cal.). On July 1, 2002, the court ordered the Service to reconsider its not prudent determination, and propose critical habitat, if prudent, for the species by September 15, 2003, and a final critical habitat designation, if prudent, no later than September 15, 2004. However, the Service exhausted the funding appropriated by Congress to work on critical habitat designations in 2003 prior to completing the proposed rule. On September 8, 2003, the court issued an order extending the publication date of the proposed critical habitat designation for *A. jaegerianus* to April 1, 2004, and the final designation to April 1, 2005. In light of *Natural Resources Defense Council* v. *U.S. Department of the Interior*, 113 F.3d 1121 (9th Cir. 1997), and the diminished threat of overcollection, the Service has reconsidered its decision and has determined that it is prudent to designate critical habitat for the species.

Critical Habitat

Section 3(5)(A) of the Act defines critical habitat as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands. Under section 7 of the Act, Federal agencies must consult with us on activities they undertake, fund, or permit that may affect critical habitat and lead to its destruction or adverse modification. However, the Act prohibits unauthorized take of listed species and requires consultation for activities that may affect them, including habitat alterations, regardless of whether critical habitat has been designated. We have found that the designation of critical habitat provides little additional protection to most listed species.

To be included in a critical habitat designation, habitat must be either a specific area within the geographic area occupied by the species on which are found those physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)) and which may require special management considerations or protections, or be specific areas outside of the geographic area occupied by the species which are determined to be essential to the conservation of the species. Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Regulations at 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species. When we designate critical habitat, we may not have the information necessary to identify all areas that are essential for the conservation of the species. Nevertheless, we are required to designate those areas we consider to be essential, using the best information available to us. Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best available scientific and commercial data demonstrate that those areas are essential for the conservation needs of the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties or other entities that develop HCPs, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Section 4 of the Act requires that we designate critical habitat on the basis of what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted

projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Relationships to Sections 3(5)(A) and 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection. As such, for an area to be designated as critical habitat for a species it must meet both provisions of the definition. In those cases where an area does not provide those physical and biological features essential to the conservation of the species, it has been our policy not to include them in designated critical habitat. Likewise, if we believe that an area determined to be biologically essential has an adequate conservation management plan that covers the species and provides for adaptive management sufficient to conserve the species, then special management and protection are not needed. Therefore, these areas do not meet the second provision of the definition and are also not proposed as critical habitat. Examples of conservation management plans that we consider when designating critical habitat include Habitat Conservation Plans (HCPs) for nonmilitary areas.

Further, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised on the basis of the best scientific data available after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined, following an analysis, that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. Consequently, we may exclude an area from designated critical habitat based on economic impacts, or other relevant impacts such as preservation of conservation partnerships and national security.

In our critical habitat designations we have used both the provisions outlined in sections 3(5)(A) and 4(b)(2) of the Act to evaluate those specific areas proposed for designation as critical habitat and those areas which are subsequently finalized (*i.e.*, designated). We have applied the provisions of these sections of the Act to lands essential to the conservation of the subject species to evaluate and either exclude from final critical habitat or not include in proposed critical habitat. Lands in which we have either excluded from or not included in critical habitat based on those provisions include those covered by: (1) Legally operative HCPs that cover the species, and provide assurances that the conservation measures for the species will be implemented and effective; (2) draft HCPs that cover the species, have undergone public review and comment, and provide assurances that the conservation measures for the species will be implemented and effective (*i.e.*, pending HCPs); (3) Tribal conservation plans that cover the species and provide assurances that the conservation measures for the species will be implemented and effective; (4) State conservation plans that provide assurances that the conservation measures for the species will be implemented and effective; and (5) Fish and Wildlife Service Comprehensive Conservation Plans that provide assurances that the conservation measures for the species will be implemented and effective.

As discussed above, the Bureau is leading the development of the WMP; the WMP includes the federal action of amending the Bureau's California Desert Conservation Area Plan and the development of a habitat conservation plan for non-federal lands within the planning area. Conservation of *A. jaegerianus* is a key factor that is being considered in the development of the WMP. We have been providing technical assistance to the Bureau to ensure that the WMP provides for protection and management of habitat essential for the conservation of this species. In addition, the Bureau's proposed amendments to the California Desert Conservation Area Plan will be subject to consultation under section 7 of the Act. As part of the WMP, the Bureau is proposing to establish the Coolgardie Mesa and West Paradise Conservation Areas, to implement management actions that will contribute toward the conservation of the species, and to modify current activities within these areas so that such activities will not impair the conservation of the species. The County of San Bernardino is the lead agency for preparing the specific portion of the habitat conservation plan that would be in effect for this portion of the planning area. The habitat conservation plan may not contain specific measures to conserve *A. jaegerianus* on private lands; however, both components of the WMP target these lands for acquisition and subsequent management for the conservation of the species. We will conduct an economic analysis that includes potential economic effects of the actions proposed in the WMP, and we will consider the results of the economic analysis and the adequacy of the WMP in the conservation of *A. jaegerianus* in our final critical habitat determination.

The Sikes Act Improvement Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species.

Section 318 of the fiscal year 2004 National Defense Authorization Act (Pub. L. 108–136) amended the Act to address the relationship of INRMPs to critical habitat. We are proposing to designate Army lands on NTC as critical habitat for *Astragalus jaegerianus*. Although NTC has an INRMP in place, it does not address *A. jaegerianus* and it does not include the withdrawn lands where much of the critical habitat for *A. jaegerianus* is located. The Army is amending its existing INRMP to address the conservation of *A. jaegerianus* throughout its lands, including the expansion area. However, we cannot exclude Army lands from this proposed critical habitat designation under this amendment to the Act because the amended INRMP has not been completed and we have not had the opportunity to determine if the INRMP provides a benefit to *A. jaegerianus*. We will consider the INRMP if it is completed prior to our final designation

of critical habitat, or at a later date, if the Service has sufficiént funding to undertake a proposed withdrawal of critical habitat.

Military lands may also be excluded from critical habitat designation based on section 4(b)(2) of the Act. As discussed above, an area may be excluded from critical habitat if it is determined, following an analysis of relevant impacts including the impact to national security, that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. Currently, the Army had proposed a combination of conservation measures and military training over *A. jaegerianus* sites. When we conduct the 4(b)(2) analysis prior to finalizing this designation, we will fully consider the final plans for the expansion areas, the economic analysis, and any comments received from the Army on this proposal.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of *Astragalus jaegerianus*. This information included data from our files that we used for listing the species; geologic maps (California Geologic Survey 1953), recent biological surveys and reports, particularly from the Army surveys of 2001 (Charis 2002); additional information provided by the Army, the Bureau of Land Management, and other interested parties; and discussions with botanical experts. We also conducted multiple site visits to all three units that are being proposed for designation.

The longterm probability of the survival and recovery of *Astragalus jaegerianus* is dependent upon the protection of existing population sites, and the maintenance of ecologic functions within these sites, including connectivity within and between populations within close geographic proximity to facilitate pollinator activity and seed dispersal mechanisms, and the ability to maintain these areas free of major ground-disturbing activities. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of *A. jaegerianus*.

In our delineation of the critical habitat units, we selected areas to provide for the conservation of *Astragalus jaegerianus* at the four sites where it is known to occur. All four sites are essential because, as cited earlier, Astragalus jaegerianus exhibits life history attributes, including variable seed production, low germination rates, and habitat specificity in the form of a dependence on a co-occurring organism (host shrubs), that make it particularly vulnerable to extinction (Keith 1998, Gilpin and Soule 1986). We believe the proposed designation is of sufficient size to maintain landscape scale processes and to minimize the secondary impacts resulting from human occupancy and human activities occurring in adjacent areas. We mapped the units with a degree of precision commensurate with the available information, the size of the unit, and the time allotted to complete this proposal. We anticipate that the boundaries of the three mapping units may be refined based on additional information received during the public comment period.

Of principle importance in the process of delineating the proposed critical habitat units are data in a geographic information system (GIS) format provided by the Army depicting the results of field surveys for *Astragalus jaegerianus* conducted in 2001 by the Army (Charis 2002). These data consisted of three files depicting the locations of transects that were surveyed for *A. jaegerianus*, the locations of *A. jaegerianus* individuals found during the surveys, and minimum convex polygons (MCP) calculated to represent the outer bounds of *A. jaegerianus* populations (Charis 2002).

For mapping proposed critical habitat units, we proceeded through a multi-step process. First, we started with the MCPs that had been calculated by the Army (Charis 2002). We then expanded these boundaries outward from the edge of each of the 4 populations by a distance of 0.25 mi (0.4 km). We did this to include *Astragalus jaergerianus* individuals that are part of these essential populations, but were not noted during surveys. The basis for determining that these additional land areas are occupied are as follows: (1) This habitat has the appropriate elevational range, and includes the Primary Constituent Elements (PCEs) (See Primary Constituent Elements section below), *i.e.* granitic soils, and plant communities that support host plants that *A. jagerianus* requires; (2) Botanists involved in the Army surveys stated that "the estimate of [*A. jagerianus*] distribution is a minimum" (SAIC 2003); and that additional individuals of *A. jaegerianus* most likely occurred on the fringes of the MCPs. (Wertenberger in litt. 2003); (3) mapping errors during the 2001 surveys indicated that the location of individuals did not match up precisely with the location of the transect boundaries (Charis 2002); (4) limited surveys were conducted in 2003, and despite the unfavorable climatic conditions for *A. jaegerianus*, 13 additional individuals were located outside the MCPs (SAIC 2003). Three of the four areas where new plants were found were within the 0.25 mi (0.4 km) boundary; and (5) this 0.25 mi (0.4 km) distance is commensurate in scale with the distance between transects where individuals were found and the distance between individuals along one transect, and it is well within the distance that can be traversed by pollinators and seed dispersers.

We next removed areas on the margins of the critical habitat units where we determined, by referring to digital raster graphic maps, the topography is either too steep or the elevation too high to support additional *Astragalus jaegerianus* individuals. This boundary modification involved editing the eastern and southeastern edge of the Coolgardie Unit and a cirque-shaped sliver from the central portion of the southern boundary of the Goldstone-Brinkman Unit.

For the Goldstone and Brinkman-Montana populations, expansion of the MCP boundaries by 0.25 mi (0.4 km) left a narrow corridor (about 0.125 mi (0.2 km)) between the revised population boundaries. We chose to bridge the gap between the two populations by incorporating the intervening habitat that is within the geographic area occupied by the species between the Goldstone and Brinkman-Montana populations and occupied as seed banks into a single critical habitat unit. We did this for several reasons: the intervening habitat between the two MCPs contains the PCEs with the appropriate elevational range, granitic soils, and plant communities (based on topographic maps, geologic maps, and aerial photos) that *Astragalus jaegerianus* requires, there were no obvious geographic barriers between the two MCPs; the distance between the two closest *A. jaegerianus* individuals across the gap of the two MCPs was smaller than the distance between individuals within the MCPs; and the distance between the two MCPs was small enough that it could be easily traversed by a pollinator with a potential flight distance of 0.6 mi (1 km), or a seed disperser such as certain small mammals and birds. These granitic soils and plant community also provide habitat for the pollinators that visit *A. jaegerianus* flowers that results in the production of seed, habitat for seed

dispersers (birds, small mammals, and large insects) that carry seed between the coppices of suitable host shrubs, and as long-term storage for the soil seedbank of *A. jaegerianus*.

For the Paradise population, we removed a small portion of habitat (47 ac (19 ha)) from the eastern edge of the MCP. (5,497 ac (2,225 ha)), thereby eliminating a small cluster of three individuals and the surrounding suitable habitat from the proposed critical habitat unit. We did this for two reasons: the distance between this small cluster of three individuals and the other 1,487 individuals mapped within the MCP was greater than the distance between other clusters of individuals within the MCP, and this cluster of individuals was not adjacent to, or providing connectivity to, any other known population of *A. jaegerianus*.

Finally, the boundaries of the critical habitat units were modified slightly in the process of creating the legal descriptions of the critical habitat units. This process consisted of overlaying the critical habitat units with grid lines spaced at 100-m intervals; the grid lines following the Universal Transverse Mercator (UTM) coordinate system ties to the North American Datum of 1927. Vertices defining the critical habitat boundary polygon were then moved to the closest vertex on the 100-m UTM grid lying inside of the critical habitat boundary. Vertices not necessary to define the shape of the boundary polygon were deleted. Changing the boundaries in this fashion serves two purposes: (1) It creates a list of coordinates that is easier for the public to use when looking at USGS 7.5 minute topographic maps and, (2) it minimizes the number of coordinates necessary to define the shapes of the critical habitat units.

In selecting areas of proposed critical habitat, we typically make an effort to avoid developed areas, such as roads and buildings at NASA's Goldstone facilities, and that are unlikely to contribute to the conservation of *Astragalus jaegerianus*. However, we did not map critical habitat in sufficient detail to exclude patches of habitat within the larger areas being mapped that are unlikely to contain the primary constituent elements essential for the conservation of *A. jaegerianus*. Land within the boundaries of the mapped units upon which are located facilities, such as buildings, roads, parking lots, communication tower pads, and other paved areas, does not and will not contain any of the primary constituent elements. In addition, old mining sites where the soil profile and topography have been so altered that no native vegetation can grow also do not and will not contain any of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of *Astragalus jaegerianus* is described in the Background section of this proposal and in the final listing rule. The proposed critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *Astragalus jaegerianus* throughout its range and to provide those habitat components essential for the conservation of the species. These habitat components provide for: (1) Individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal, and seed bank; (2) sites for the host plants that provide structural support for *A. jaegerianus*; (3) intervening areas that allow gene flow and provide connectivity or linkage within segments of the larger population; and (4) areas that provide basic requirements for growth, such as water, light, and minerals.

The conservation of *Astragalus jaegerianus* is dependent upon a number of factors, including the protection and management of existing population sites and habitat and the maintenance of normal ecological functions within these sites, including connectivity between groups of plants within close geographic proximity to facilitate gene flow among the sites by pollinator activity and dispersal of seeds. Some of the factors associated with the observed and potential distribution of this species include the following: A portion of seeds will likely germinate if germination requirements of scarification and moisture are met within a germination time frame for the species; germination patterns likely reflect the distribution of the seed bank in the soils; and distribution patterns of standing plants may, in large part, reflect the distribution pattern of requisite climatic conditions for a particular year, while in other areas, standing plants may not be visible but persist as dormant taproots for a number of years. Including habitat surrounding the known populations outward for a distance of 0.25 mi (0.4 km) would ensure inclusion of most of the population.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Astragalus jaegerianus* consist of:

(1) Shallow soils (between 3,100 and 4,200 ft (945 to 1,280 m) in elevation) derived primarily from Jurassic or Cretaceous granitic bedrock, and less frequently on soils derived from diorite or gabbroid bedrock and at one location on granitic soils overlain by scattered rhyolitic cobble, gravel, and sand.

(2) The host shrubs (between 3,100 and 4,200 ft (945 to 1,280 m) in elevation) within which *Astragalus jaegerianus* grows, most notably *Thamnosma montana*, *Ambrosia dumosa*, *Eriogonum fasciculatum* ssp. *polifolium*, *Ericameria cooperi* var. *cooperi*, *Ephedra nevadensis*, and *Salazaria mexicana* that are usually found in mixed desert shrub communities.

We selected critical habitat areas to provide for the conservation of *Astragalus jaegerianus* at the only four sites where they are known to occur. We are not proposing any critical habitat units that do not contain plants.

Special Management Considerations

Within the geographic area occupied by the species, for an area to be designated as critical habitat it must contain those physical or biological features essential to the conservation of the species that may require special management considerations or protection. The Goldstone-Brinkman unit may require special management considerations or protection due to the threats to the species and its habitat posed by invasions of non-native plants such as Sahara mustard (*Brassica tournefortii*) that may take over habitat for the species; habitat fragmentation that detrimentally affects plant-host plant (composition and structure of the desert scrub community) and plant-

pollinator interactions, leading to a decline in species reproduction and increasing susceptibility to non-native plant invasion; and vehicles that cause direct and indirect impacts, such as excessive dust, to the plant. Habitat for *Astragalus jaegerianus* in the Goldstone-Brinkman unit has been fragmented to a minor extent. We anticipate that in the future, habitat fragmentation will increase, that changes in composition and structure of the plant community may be altered by the spread of non-native plants, and that the direct and indirect effects of dust may increase. All of these threats would render the habitat less suitable for *A. jaegerianus*, and special management may be needed to address them. At this time, special management considerations under 3(5)(a) of the Act do warrant proposing this unit as critical habitat, but if circumstances change these areas may be designated in the final rule.

The Paradise unit may require special management considerations or protection due to the threats to the species and its habitat posed by invasions of non-native plants such as Sahara mustard (*Brassica tournefortii*) that may take over habitat for the species; habitat fragmentation that detrimentally affects plant-host plant (composition and structure of the desert scrub community) and plant-pollinator interactions, leading to a decline in species reproduction and increasing susceptibility to non-native plant invasion; vehicles that cause direct and indirect impacts, such as excessive dust, to the plant. Habitat for *Astragalus jaegerianus* in the Paradise unit has been fragmented to a minor extent. We anticipate that in the future, habitat fragmentation may increase, that changes in composition and structure of the plant community may be altered by the spread of non-native plants, and that the direct and indirect effects of dust may increase. All of these threats would render the habitat less suitable for *A. jaegerianus*, and special management may be needed to address them. At this time, special management considerations under 3(5)(a) of the Act do warrant proposing this unit as critical habitat, but if circumstances change these areas may be designated in the final rule.

The Coolgardie unit may require special management considerations or protection due to the threats to the species and its habitat posed by invasions of non-native plants such as Sahara mustard (*Brassica tournefortii*) that may take over habitat for the species; habitat fragmentation that detrimentally affects plant-host plant (composition and structure of the desert scrub community) and plant-pollinator interactions, leading to a decline in species reproduction and increasing susceptibility to non-native plant invasion; vehicles that cause direct and indirect impacts, such as excessive dust, to the plant; and limited mining activities that can lead to changes in essential habitat conditions (*e.g.*, decreases in plant cover, and increases in non-native species). Habitat for *Astragalus jaegerianus* in the Coolgardie unit has been fragmented to a moderate extent from current and historical mining and from off-road vehicle use, and non-native species have been introduced into the area. We anticipate that in the future, habitat fragmentation may increase, and that changes in composition and structure of the plant community may be altered by the continued spread of non-native plants. All of these threats would render the habitat less suitable for *A. jaegerianus*, and special management may be needed to address them. At this time, special management considerations under 3(5)(a) of the Act do warrant proposing this unit as critical habitat, but if circumstances change these areas may be designated in the final rule.

Proposed Critical Habitat Designation

The proposed critical habitat areas described below constitute our best assessment at this time of the areas needed for the species' conservation. The three areas being proposed as critical habitat are all within an area that is north of the town of Barstow in the Mojave Desert in San Bernardino County, California, are currently occupied, and contain the primary constituent elements that sustain the *Astragalus jaegerianus*.

The following general areas are proposed as critical habitat (*see* legal descriptions for exact critical habitat boundaries).

Unit 1: Goldstone-Brinkman

Unit 1 consists of approximately 9,906 ac (4,008 ha), with 9,502 ac (3,845 ha) of the lands managed by the Army on NTC. Of the Army land, 996 ac (403 ha) are leased to NASA (Goldstone Tracking Station). The Army is proposing to designate approximately 1,300 ac (526 ha) as the Goldstone Conservation Area. The rest of the unit consists of 211 ac (85 ha) of state land, and 193 ac (78 ha) of private land. This unit is essential because it supports two of the four populations of *Astragalus jaegerianus*—the Goldstone and Brinkman Wash—Montana Mine populations. In 2001 surveys, 555 and 1,487 individuals were observed, respectively, in these two populations. The land within this unit supports the PCEs for the species—granitic soils and plant community that are necessary for the growth, reproduction, and establishment of *A. jaergerianus* individuals. This unit also includes an essential narrow 0.125 mi (0.2 km) corridor between the two populations that contains the appropriate granitic soils and plant community to support *A. jaegerianus*, and supports pollinators and seed dispersers between the two populations. This unit is the northeasternmost of the three units.

Unit 2: Paradise

Unit 2 consists of approximately 6,828 ac (2,763 ha). Of this, 5,755 ac (2,329 ha) is on Army lands on NTC, and approximately 466 ac (189 ha) on adjacent Federal lands managed by the Bureau of Land Management (Bureau). The Army is proposing to designate approximately 4,800 ac (1,943 ha) of this site as the East Paradise Valley Conservation Area. The Bureau is also proposing to designate an area of approximately 1,000 ac (405 ha), which includes some private inholdings, at this site as part of the East Paradise Valley Conservation Area. This unit is essential because it supports the Paradise population, only one of four populations of *Astragalus jaegerianus*; in 2001 surveys, 1,667 individuals were observed in this population. The land within this unit supports the granitic soils and plant community that are necessary for the growth, reproduction, and establishment of *A. jaegerianus* individuals. These granitic soils and plant community also provide habitat for the pollinators that visit *A. jaegerianus* flowers that results in the production of seed, habitat for seed dispersers (birds, small mammals, and large insects) that carry seed between the coppices of suitable host shrubs, and as long-term storage for the soil seedbank of *A. jaegerianus*.

Unit 3: Coolgardie

Unit 3 consists of approximately 12,788 ac (5,175 ha), primarily on Federal lands managed by the Bureau. Approximately the same amount of land (9,161 ac (3,707 ha)) is within the Bureau's proposed Coolgardie Mesa Conservation Area (CMCA) and overlaps to a great extent with the proposed Coolgardie critical habitat unit. Parcels of private land are scattered throughout this unit and total approximately 3,627 ac (1,467 ha). Some portion of these parcels most likely will be acquired by the Bureau and added to the CMCA. This unit is essential because it supports one of only four populations of *Astragalus jaegerianus*. In 2001 surveys,

2,014 plants were observed in this population. The land within this unit supports the granitic soils and plant community that are necessary for the growth, reproduction, and establishment of *A. jaegerianus* individuals; proposed critical habitat does not include the "donut hole" in the center of the unit, which does not contain the appropriate granitic soils. These granitic soils and plant community also provide habitat for the pollinators that visit *A. jaegerianus* flowers that results in the production of seed, habitat for seed dispersers (birds, small mammals, and large insects) that carry seed between the coppices of suitable host shrubs, and as long-term storage for the soil seedbank of *A. jaegerianus*.

The approximate areas of proposed critical habitat by land ownership are shown in Table 1.

TABLE 1.—APPROXIMATE AREAS, GIVEN IN ACRES (AC) [1] AND HECTARES (HA) OF PROPOSED CRITICAL HABITAT FOR *Astragalus jaegerianus* BY LAND OWNERSHIP

Unit name	Department of Defense lands (Federal)	Bureau of Land Management (Federal)	State lands commission	Private lands	Totals
1. Goldstone-Brinkman	9,502 ac (3,845 ha)	0 ac (0 ha)	211 ac (85 ha)	193 ac (78 ha)	9,906 ac (4,008 ha)
2. Paradise	5,755 ac (2,329 ha)	466 ac (189 ha)	0 ac (0 ha)	607 ac (246 ha)	6,828 ac (2,763 ha)
3. Coolgardie	0 ac (0 ha)	9,074 ac (3,672 ha)	0 ac (0 ha)	3,714 ac (1503 ha)	12,788 ac (5,175 ha)
Totals	15,257 ac (6,174 ha).	9,627 ac (3,896 ha)	211 ac (85 ha)	4,427 ac (1,792 ha)	29,522 ac (11,947 ha)

[1] Approximate acres have been converted to hectares (1 ac = 0.4047 ha). Fractions of acres and hectares have been rounded to the nearest whole number. Totals are sums of units.

Effects of Critical Habitat Designation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. "Reasonable and prudent alternatives" are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly affect critical habitat include, but are not limited to:

(1) Activities that would disturb the upper layers of soil, including disturbance of the soil crust, soil compaction, soil displacement, and soil destabilization. These activities include, but are not limited to, livestock grazing, fire management, and recreational use that would include mechanical disturbance such as would occur with tracked vehicles, heavy-wheeled vehicles, off-highway vehicles (including motorcycles), and mining activities, such as "club mining" with drywashers and sluices.

(2) Activities that appreciably degrade or destroy the native desert scrub communities, including but not limited to livestock grazing, clearing, discing,

fire management, and recreational use that would include mechanical disturbance such as would occur with tracked vehicles, heavy-wheeled vehicles, off-highway vehicles (including motorcycles), and mining activities such as "club mining" with drywashers and sluices.

(3) The application or runoff of chemical or biological agents into the air, onto the soil, or onto native vegetation, including substances such as pesticides, herbicides, fertilizers, tackifiers, obscurants, and chemical fire retardants.

Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of *Astragalus jaegerianus* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

We recognize that the proposed designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For this reason, we want to ensure that the public is aware that critical habitat designations do not signal that habitat outside the proposed designation is unimportant or may not be required for recovery. Areas outside the proposed critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act. Critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Activities on Federal lands that may affect *Astragalus jaegerianus* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or any other activity requiring Federal action (*i.e.*, funding, authorization), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal and private lands that are not federally funded, authorized, or permitted, do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Astragalus jaegerianus* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Designation of critical habitat could affect the following agencies and/or actions:

(1) Military-related and construction activities of the Army on its lands or lands under its jurisdiction, including those lands leased to NASA;

(2) Activities of the Bureau of Land Management on its lands or lands under its jurisdiction;

(3) The release or authorization of release of biological control agents by Federal agencies, including the Bureau of Land Management, the Army, and the U.S. Department of Agriculture; and

(4) Habitat restoration projects on private lands receiving funding from Federal agencies, such as from the Natural Resources Conservation Service.

As discussed previously in this rule, we are consulting with both the Army and the Bureau on activities that are being proposed on their lands. We are consulting with the Army on its proposed addition of training lands on NTC (Charis 2003). We are also consulting with the Bureau as the lead Federal agency for the proposed West Mojave Plan (Bureau 2003).

Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure an incidental take permit, pursuant to section 10(a)(1)(B) of the Act, would be subject to the section 7 consultation process. The Superior-Cronese Critical Habitat Unit for the desert tortoise (*Gopherus agassizii*), a species that is listed as threatened under the Act, overlaps in range with *Astragalus jaegerianus* in a portion of the Brinkman-Montana, Paradise, and Coolgardie populations of the species. Although we anticipate that most of the activities occurring on private lands within the range of *A. jaegerianus* will eventually be included under the umbrella of the HCP to be prepared by the County of San Bernardino, there may be activities proposed for private lands that either need to be completed prior to the approval of the WMP's HCP, or there may be a proposed activity that is not covered by the HCP, and therefore may require a separate habitat conservation plan.

If you have questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232 (telephone 503/231–6131; facsimile 503/231–6243).

Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

We have not excluded any lands from this proposed designation pursuant to sections 3(5)(A), 4(a)(3), and 4(b)(2) of the Act. Although the Bureau has published the draft EIR/S for the West Mojave Plan and we anticipate the final plan may be published in fall 2004, the attendant draft HCP has yet to be prepared. The proposed designation includes a portion of Fort Irwin, an Army installation. The Army has proposed to establish two conservation areas and an additional area that would be subject to light use (*i.e.*, foot traffic only); however, the integrated natural resource management plan for this portion of the installation has not been finalized. We expect to work with the Army on the development of the integrated natural resource management plan for Fort Irwin in the coming months. We may consider excluding these lands from critical habitat in the final designation pursuant to these sections of the Act.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for the *Astragalus jaegerianus* is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://ventura.fws.gov*, or by contacting the Ventura Fish and Wildlife Office directly (*see* **ADDRESSES** section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least

three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received within the 60-day comment period on this proposed rule as we prepare our final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (*see* **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following—(1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to—Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to: *Exsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (EO) 12866, this action was submitted to the Office of Management and Budget (OMB); however they declined to review the proposed rule. We will submit the final rule to OMB for their review. OMB makes the final determination under Executive Order 12866.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the Regulatory Flexibility Act to require a certification statement. Based on the information that is available to us at this time, we are certifying that this proposed designation of critical habitat will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (SBA), small entities include small organizations, including any independent nonprofit organization that is not dominant in its field, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. The SBA defines small businesses categorically and has provided standards for determining what constitutes a small business at 13 CFR parts 121–201 (also found at *http://www.sba.gov/size/*), which the Regulatory Flexibility Act requires all Federal agencies to follow. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result.

The Regulatory Flexibility Act does not explicitly define either "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a "significant economic impact." Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the Regulatory Flexibility Act. (*Mid-Tex Electric Co-Op, Inc.* v. *F.E.R.C.* and *American Trucking Associations, Inc.* v. *EPA*).

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation if they lack a Federal nexus. In areas where the species is present, Federal agencies funding, permitting, or implementing activities are already required to avoid jeopardizing the continued existence of the *Astragalus jaegerianus* through consultation with us under section 7 of the Act. If this critical habitat designation is finalized, Federal agencies must also consult with us to ensure that their activities do not destroy or adversely modify designated critical habitat.

Should a federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project proponents.

In the case of *Astragalus jaegerianus*, our review of the consultation history for this plant and other information currently available to us indicates that the proposed designation of critical habitat is not likely to have a significant impact on any small entities or classes of small entities. We could identify no small entities that would be affected by this designation. Therefore, we are certifying that the proposed designation of critical habitat for *Astragalus*

jaegerianus will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. This determination will be revisited after the close of the comment period and revised, if necessary, in the final rule.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation and will make that analysis available for public review and comment before finalizing this designation. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed.

This discussion is based upon the information regarding potential economic impact that is available to us at this time. This assessment of economic effects may be modified prior to final rulemaking based upon development and review of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and Executive Order 12866. This analysis is for the purpose of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the draft economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the *Astragalus jaegerianus*, as described above, is not expected to significantly affect energy supplies, distribution, or use. There are no transmission power lines identified on the proposed designated habitat, or energy extraction activities (Bureau of Land Management 1980). Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings.

(a) Under the Unfunded Mandates Reform Act, if a rule will produce a Federal mandate of $100 million or greater in any one year, a statement must be prepared and a summary of that statement included in the rulemaking. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). If the economic analysis being prepared to analyze the economic impacts of this designation indicates that the rule will produce a Federal mandate of $100 million or more in any year, a statement will be prepared and this proposed rule will be supplemented with a summary of that statement published in the notice announcing availability of the proposed economic analysis.

(b) This proposed rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. State lands constitute a very small amount, only 0.7%, of the total proposed designation. Given the distribution of this species, small governments will not be uniquely affected by this proposed rule. Small governments will not be affected at all unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the involved Federal agency ensure that the action is not likely to adversely modify or destroy designated critical habitat. However, as discussed above, Federal agencies are currently required to ensure that any such activity is not likely to jeopardize the species, and no further regulatory impacts from this proposed designation of critical habitat are anticipated. We will examine any potential impacts to small governments in our economic analysis, and revise our determination if necessary.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference With Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for *Astragalus jaegerianus*. This preliminary assessment concludes that this proposed rule does not pose significant takings implications. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by *Astragalus jaegerianus* would have little incremental impact on State and local governments and their activities. This is because the proposed critical habitat occurs to a great extent on Federal lands managed by the Department of Defense and the Bureau of Land Management, and less than 2 percent occurs on private lands that would involve State and local agencies.

The proposed designation of critical habitat may have some benefit to State and local governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Astragalus jaegerianus*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act.

Information collections associated with certain Act permits are covered by an existing OMB approval and are assigned clearance No. 1018–0094, Forms 3–200–55 and 3–200–56, with an expiration date of July 31, 2004. Detailed information for Act documentation appears at 50 CFR part 17. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951) and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a Government-to-Government basis. We have determined that there are no Tribal lands essential for the conservation of *Astragalus jaegerianus*. Therefore, designation of critical habitat for *A. jaegerianus* has not been proposed on Tribal lands.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Constance Rutherford, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (805/644–1766).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h), revise the entry for "*Astragalus jaegerianus*" under "FLOWERING PLANTS," to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Astragalus jaegerianus.	Lane Mountain milk-vetch.	U.S.A. (CA)	Fabaceae—Pea	E	647	17.96(a)	NA
*	*	*	*	*	*	*	

3. In § 17.96(a), add critical habitat for *Astragalus jaegerianus*, in alphabetical order under Family Fabaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering plants.

* * * * *

Family Fabaceae: *Astragalus jaegerianus* (Lane Mountain milk-vetch)

(1) Critical habitat units are depicted for San Bernardino County, California, on the maps below.

(2) Critical habitat consists of the mixed desert scrub community within the range of *Astragalus jaegerianus* that is characterized by the following primary constituent elements:

(i) Shallow soils derived primarily from Jurassic or Cretaceous granitic bedrock, and less frequently soils derived from diorite or gabbroid bedrock and at one location granitic soils overlain by scattered rhyolitic cobble, gravel, and sand.

(ii) The highly diverse mixed desert scrub community that includes the host shrubs within which *Astragalus jaegerianus* grows, most notably: *Thamnosma montana, Ambrosia dumosa, Eriogonum fasciculatum* ssp. *polifolium, Ericameria cooperi* var. *cooperi, Ephedra nevadensis*, and *Salazaria mexicana*.

(3) Critical Habitat Map Units.

(i) Map Unit 1: Goldstone-Brinkman. San Bernardino County, California. From USGS 1:24,000 quadrangle maps Paradise Range and Williams Well. Lands bounded by UTM zone 11 NAD27 coordinates (E,N): 511200; 3897700: 511400; 3898100; 511600; 3898400: 511800; 3898600: 515900; 3898600: 516400; 3898500: 516800; 3898400: 516900; 3898300: 517300; 3898500: 517500; 3898600: 517600; 3898700: 517500; 3899100: 517500; 3900100: 517600; 3900200: 518400; 3900600: 519000; 3900600: 519600; 3900500: 520000; 3900300: 520200; 3900100: 521400; 3898700: 521500; 3898500: 521500; 3898300: 521400; 3897900: 521300; 3897800: 521100; 3897700: 519400; 3897700: 518600; 3897800: 518400; 3897600: 518100; 3897400: 517900; 3897300: 517800; 3897100: 517300; 3896600: 517400; 3896500: 517700; 3895900: 517700; 3895300: 517600; 3894700: 517500; 3894500: 517400; 3894400: 517000; 3894100: 516900; 3894000: 517300; 3893800: 517800; 3893500: 518100; 3893300: 518200; 3893200: 518200; 3892900: 518000; 3892600: 517500; 3892100: 517300; 3892100: 517100; 3892200: 516800; 3892400: 515800; 3893100: 515600; 3893300: 515500; 3893200:

514000; 3892200: 513600; 3892200: 512900; 3892600: 512500; 3893000: 512400; 3893200: 512500; 3893800: 512600; 3894400: 512700; 3894900: 512800; 3895000: 514400; 3896100: 514600; 3896200: 514700; 3896200: 515000; 3896100: 515100; 3896600: 512800; 3896500: 511900; 3896600: 511700; 3896700: 511400; 3897100: 511200; 3897400: returning to 511200; 3897700.

(ii) Map Unit 2: Paradise.

San Bernardino County, California. From USGS 1:24,000 quadrangle map Williams Well. Lands bounded by UTM zone 11 NAD27 coordinates (E,N): 504000; 3895000: 504400; 3895200: 505100; 3895500: 505800; 3895500: 506200; 3895400: 506600; 3895300: 506800; 3895100: 507500; 3893900: 507600; 3894000: 508400; 3894700: 508800; 3895000: 509300; 3895400: 509500; 3895500: 509900; 3895500: 510000; 3895400: 510200; 3895100: 510600; 3894400: 510700; 3894200: 510800; 3893900: 510900; 3893500: 510900; 3893000: 510800; 3892500: 510500; 3891200: 510400; 3891000: 510200; 3890800: 509700; 3890500: 507800; 3889400: 507600; 3889300: 507500; 3889300: 507100; 3889400: 506700; 3889800: 506400; 3890300: 506200; 3891000: 506000; 3891800: 505900; 3892200: 505600; 3892400: 504900; 3892900: 504500; 3893300: 504300; 3893600: 503900; 3894300: 503900; 3894800: returning to 504000; 3895000.

(iii) Map Unit 3: Coolgardie.

San Bernardino County, California. From USGS 1:24,000 quadrangle maps Lane Mountain and Mud Hills. Lands bounded by UTM zone 11 NAD27 coordinates (E,N): 495800; 3884400: 496400; 3884800: 497200; 3885200: 497400; 3885300: 497900; 3885500: 498300; 3885600: 499100; 3885700: 500500; 3885900: 501200; 3886000: 502000; 3886100: 502700; 3886200: 503400; 3886300: 503900; 3886200: 504400; 3886000: 504800; 3885800: 505000; 3885700: 505100; 3885600: 505300; 3885400: 505400; 3885200: 505100; 3884300: 505100; 3880800: 504900; 3880300: 504800; 3880100: 504600; 3879700: 504400; 3879600: 503900; 3879400: 503500; 3879300: 503000; 3879200: 502400; 3879100: 502100; 3879100: 502000; 3878900: 502000; 3878800: 501900; 3878600: 501100; 3878500: 500400; 3878400: 499700; 3878300: 499600; 3878300: 499300; 3878400: 498600; 3878600: 498400; 3878800: 498100; 3879900: 498000; 3880300: 497800; 3881000: 496300; 3881600: 496100; 3881800: 496000; 3882200: 495800; 3883000: 495700; 3883500: 495600; 3883900: 495600; 3884000: returning to 495800; 3884400.

Excluding: 498800; 3883700: 498900; 3883600: 499000; 3883400: 499400; 3882600: 499500; 3882100: 499500; 3882000: 499600; 3881800: 500000; 3881600: 500900; 3881100: 501400; 3880800: 501500; 3880800: 502100; 3881000: 502000; 3881100: 501800; 3882400: 501800; 3882800: 501700; 3882900: 501300; 3883400: 501000; 3883800: 500500; 3883800: 499100; 3883900: returning to 498800; 3883700.

(iv) **Note:** Maps for Units 1, 2, and 3 follow:

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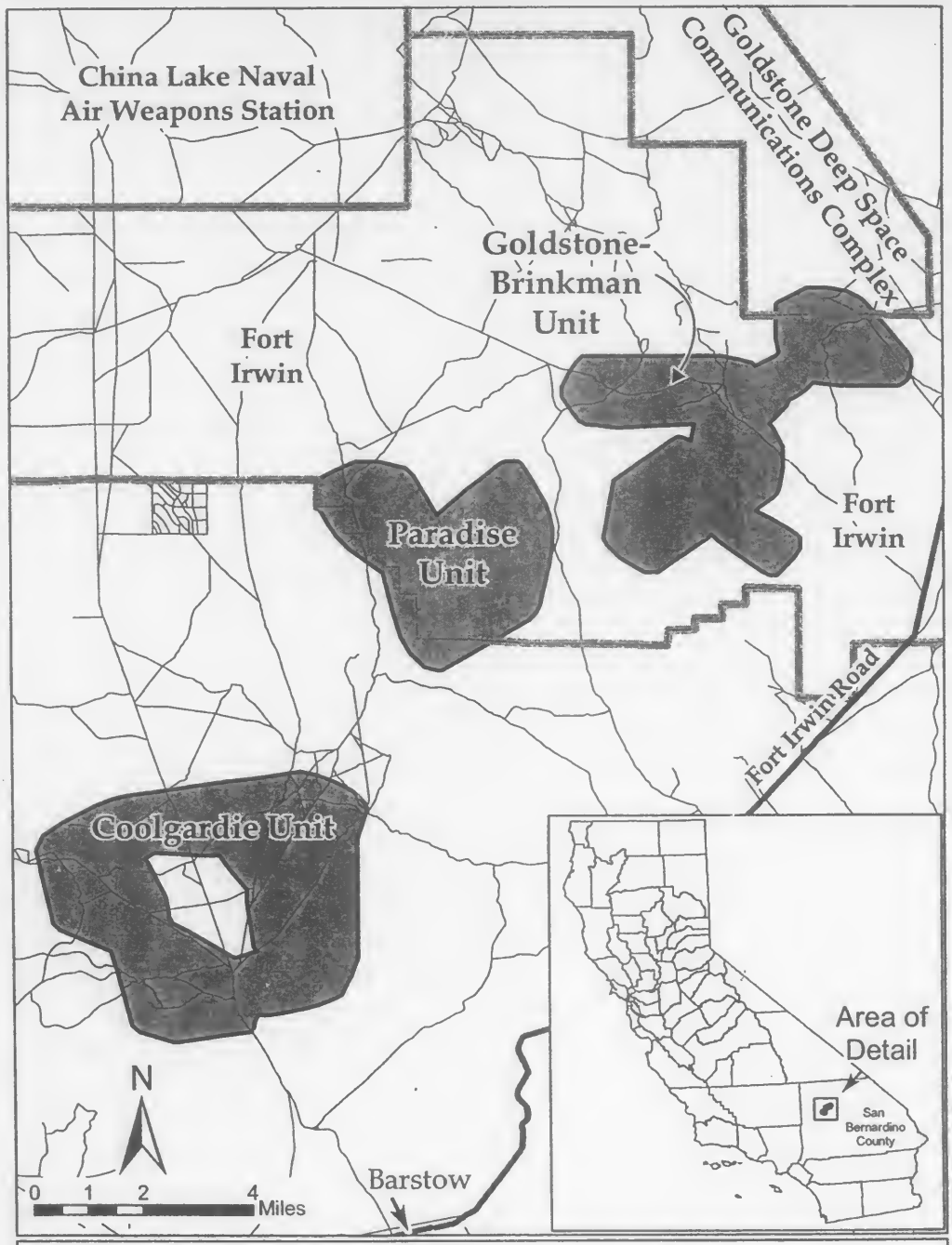

Proposed Critical Habitat for the Lane Mountain Milk-Vetch

Dated: March 30, 2004.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–7695 Filed 4–5–04; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT61

Endangered and Threatened Wildlife and Plants; Special Regulations for the Western Distinct Population Segment of the Gray Wolf

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing.

We, the U.S. Fish and Wildlife Service (Service), are conducting public hearings on a proposed special rule for nonessential experimental populations of the western distinct population segment of the gray wolf (*Canis lupis*) in Idaho and Montana. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period, and will be fully considered in the final rule.

DATES: Comments must be received by May 10, 2004, to receive consideration. (*See* "Public Hearings" section for time and location of the public hearing).

ADDRESSES: Comments on the proposed rule may be sent to Western Gray Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, 100 N. Park, #320, Helena, Montana 59601, or by email to *WesternGrayWolf@fws.gov*. You also may hand-deliver written comments to our Montana Ecological Services Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Ed Bangs, Gray Wolf Recovery Coordinator, at the above address or telephone (406) 449–5225.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2003, we published in the **Federal Register** (68 FR 15879) an advance notice of proposed rulemaking that announced our intention to propose rulemaking on nonessential experimental populations for the western distinct population segment of the gray wolf. On March 9, 2004, we published a proposed rule in the **Federal Register** (69 FR 10956) for these nonessential experimental populations and solicited public comments. Please refer to the proposed rule for background information, a summary of previous Federal actions, and provisions of the special regulations. We are now announcing public hearings to be held on this proposed rule.

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. In some circumstances, we will withhold a respondent's identity from the rulemaking record, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses available for public inspection in their entirety (*see* **ADDRESSES** section).

Public Hearings

In our March 9, 2004, proposed rule, we stated our intention to hold public hearings. Therefore, we will hold the following hearings:

Public Hearings

1. Helena, Montana—April 19, 2004, at the Colonial Hotel, 2301 Colonial Drive from 6 p.m. to 9 p.m.

2. Boise, Idaho—April 20, 2004, at The Grove Hotel, Evergreen Room, 245 South Capitol Blvd., from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m.

Anyone wishing to make an oral comment or statement for the record at the public hearing listed above is encouraged (but not required) to also provide a written copy of the statement and present it to us at the hearing. Oral and written statements receive equal consideration. In the event there is a large attendance, the time allotted for oral statements may be limited.

Author

The primary author of this notice is Sharon Rose, External Affairs Officer, Denver Regional Office, telephone 303–236–4580.

Authority

Authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 30, 2004.

Mary G. Henry,

Regional Director, Denver, Colorado.

[FR Doc. 04–7707 Filed 4–2–04; 11:22 am]

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Notices

Federal Register
Vol. 69, No. 66
Tuesday, April 6, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. TM–04–03]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) is announcing a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: The meeting dates are: Wednesday, April 28, 2004, 8 a.m. to 5 p.m., Thursday, April 29, 2004, 8 a.m. to 5 p.m., and Friday, April 30, 2004, 8 a.m. to 12 p.m. Requests from individuals and organizations wishing to make an oral presentation at the meeting are due by the close of business on April 12, 2004.

ADDRESSES: The meeting will take place at the Best Western Inn of Chicago, The Buckingham Room, 162 East Ohio Street, Chicago, Illinois. Requests for copies of the NOSB meeting agenda, requests to make an oral presentation at the meeting, or written comments may be sent to Ms. Katherine Benham, Advisory Board Specialist at USDA–AMS–TMD–NOP, 1400 Independence Avenue, SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250–0200. Requests to make an oral presentation at the meeting may also be sent via facsimile to Ms. Katherine Benham at (202) 205–7808 or electronically to Ms. Katherine Benham at *katherine.benham@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Mathews, Program Manager, National Organic Program, (202) 720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development of standards for substances to be used in organic production and to advise the Secretary on other aspects of the implementation of the OFPA.

The NOSB met for the first time in Washington, DC, in March 1992, and currently has six committees working on various aspects of the organic program. The committees are: Compliance, Accreditation, and Certification; Crops; Livestock; Materials; Handling; and Policy Development.

In August of 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture. Since that time, the NOSB has submitted 50 addenda to its recommendations and reviewed more than 256 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held on October 22–24, 2003, in Washington, DC.

The Department of Agriculture (USDA) published its final National Organic Program regulation in the **Federal Register** on December 21, 2000 (65 FR 80548). The rule became effective April 21, 2001.

The principal purposes of the meeting are to provide an opportunity for the NOSB to receive an update from the USDA/NOP and to hear a presentation on the ECert Program, receive various committee reports, receive reports from the 606 Task Force and Compost Tea Task Force, and review materials to determine if they should be included on the National List of Allowed and Prohibited Substances.

The Materials Committee will explain the materials review process and provide an update on the sunset review of materials. OFPA provides that materials on the National List will sunset unless their exemption or prohibition is reviewed and renewed within 5 years. All but those materials added during 2003 are scheduled to sunset on October 21, 2007. The Materials Committee will also present for NOSB consideration eight materials for possible inclusion on the National List of Allowed and Prohibited Substances. The Accreditation, Certification and Compliance Committee will present for NOSB consideration its recommendations regarding compliance procedures. Specifically, the committee will recommend definitions for "minor noncompliance," "noncompliance," and "organic integrity" along with noncompliance notification procedures and examples of noncompliance as guidance to Accredited Certifying Agents. The Handling Committee will provide an update on their work on the issue of food contact substances. Finally, the Policy Development Committee will present for NOSB consideration revisions to the NOSB policy manual and its recommendation on the factors and constraints to be used in determining a substance's compatibility with a system of sustainable agriculture and its consistency with organic farming and handling.

Materials to be review at the meeting by the NOSB are as follows: for Crop Production: Soy Protein Isolate, 6 Benzyladenine, Urea, and Hydrogen Chloride; for Handling: Nitrous Oxide, and Tetrasodium Pyrophosphate (TSPP); and for Livestock Production: Moxidectin and Proteinated Chelates.

For further information, see *http://www.ams.usda.gov/nop.* Copies of the NOSB meeting agenda can be requested from Ms. Katherine Benham by telephone at (202) 205–7806; or by accessing the NOP Web site at *http://www.ams.usda.gov/nop.*

The meeting is open to the public. The NOSB has scheduled time for public input on Wednesday. April 28, 2004, 8:30 a.m. to 11:30 a.m.; and Friday, April 30, 2004, 8 a.m. to 9:45 a.m. Individuals and organizations wishing to make an oral presentation at the meeting may forward their request by mail, facsimile, or e-mail to Ms. Katherine Benham at addresses listed in **ADDRESSES** above. While persons wishing to make a presentation may sign up at the door, advance registration will ensure that a person has the opportunity to speak during the allotted time period and will help the NOSB to better manage the meeting and to accomplish its agenda. Individuals or organizations will be given approximately 5 minutes to present

their views. All persons making an oral presentation are requested to provide their comments in writing. Written submissions may contain information other than that presented at the oral presentation.

Written comments may also be submitted at the meeting. Persons submitting written comments at the meeting are asked to provide 30 copies.

Interested persons may visit the NOSB portion of the NOP Web site *http://www.ams.usda.gov/nop* to view available documents prior to the meeting. Approximately 6 weeks following the meeting interested persons will be able to visit the NOSB portion of the NOP Web site to view documents from the meeting.

Dated: March 31, 2004.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–7679 Filed 4–5–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes and Ochoco National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes and Ochoco National Forests Resource Advisory Committee will meet in Redmond, Oregon. The purpose of the meeting is to receive natural resource projects that will be reviewed and recommended at a later meeting, discuss the Committee's project guidelines and decision-making priorities, review bylaws, elect a Chair, and discuss reports related to the work of the Committee under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meeting will be held May 11, 2004 from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the office of the Central Oregon Intergovernmental Council, 2363 SW Glacier Place, Redmond, Oregon 97756. Send written comments to Leslie Weldon, Designated Federal Official for the Deschutes and Ochoco Resource Advisory Committee, c/o Forest Service, USDA, Deschutes National Forest, 1645 Highway 20 East, Bend, OR 97701 or electronically to *lweldon@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Leslie Weldon, Designated Federal Official, Deschutes National Forest, 541–383–5562.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Title II matters to the attention to the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who made written requests by May 4 will have the opportunity to address the Committee at the session.

Dated: March 30, 2004.

Leslie A.C. Weldon,

Forest Supervisor, Deschutes National Forest.

[FR Doc. 04–7704 Filed 4–5–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Kootenai National Forests' Lincoln County Resource Advisory Committee will meet on April 14, 2004 at 6 p.m. in Troy, Montana for a business meeting. The meeting will be open to the public.

DATES: April 14, 2004.

ADDRESSES: The meeting will be held at the Troy Ranger Station, 1437 North U.S. Highway 2, Troy, Montana.

FOR FURTHER INFORMATION CONTACT: Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293–6211, or e-mail *bedgmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: A field trip to the completed Plateau Fuel Reduction Project is planned for April 14, 2004 at 5 p.m. Meet at the Weigh Station at the intersection of U.S. Highway 2 and State Highway 56. The meeting agenda topics include presentation of the urban interface map, status of approved projects, and review of Libby Ranger district proposals. If the meeting is changed a notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, Montana.

Dated: March 29, 2004.

Bob Castaneda,

Forest Supervisor.

[FR Doc. 04–7773 Filed 4–5–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Environmental Impact Statement on Watershed Planning and Implementation of Resource Protection Measures for the Rockhouse Creek Watershed, Leslie County, KY; Correction

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Natural Resources Conservation Service published a document in the **Federal Register** of March 19, 2004, concerning a Notice of Intent for Environmental Impact Statement on Watershed Planning and Implementation of Resource Protection Measures for the Rockhouse Creek Watershed, Leslie County, Kentucky, Scoping Meeting. The document contained incorrect meeting location.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Kuhn, Assistant State Conservationist, Natural Resource Planning, 771 Corporate Drive, Suite 210, Lexington, KY 40503–5479; telephone: 859–224–7371.

Correction

In the **Federal Register** of March 19, 2004, in FR Doc. 04–6200, on page 13015, in the second column, correct the "Scoping Meeting" caption to read:

Scoping Meeting: A public scoping meeting will be held April 20, 2004 to provide information and the opportunity to discuss the issues and alternatives that should be covered in the Draft EIS and to receive oral and written comments. The meeting will be held from 6 p.m. to 8:30 p.m. in the Rockhouse Pentecostal Church, Route 421, Hyden, KY.

Dated: March 30, 2004.

Helen V. Huntington,

Federal Register Liaison, Natural Resources Conservation Service.

[FR Doc. 04–7678 Filed 4–5–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service, USDA, Maine State Office.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices, Section IV of the Maine State NRCS Field Office Technical Guide (FOTG) located at *http://www.me.nrcs.usda.gov/technical/draftStandards.html* for review and comment.

SUMMARY: It is the intention of NRCS in Maine to issue revised conservation practice standards in its National Handbook of Conservation Practices. The revised standard is: 370 Atmospheric Resource Quality Management.

DATES: Comments will be received on or before May 6, 2004.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Christopher R. Jones, State Resource Conservationist, Natural Resource Conservation Service (NRCS), 967 Illinois Avenue, Suite #3; Bangor, Maine 04401. Copies of the standard will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agricultural Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Maine will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Maine regarding disposition of those comments and a final determination of change will be made.

Dated: March 16, 2004.

Christopher R. Jones,

State Resource Conservationist.

[FR Doc. 04–7680 Filed 4–5–04; 8:45 am]

BILLING CODE 3410–06–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the Section 502 Rural Housing Demonstration Program.

DATES: Comments on this notice must be received by June 7, 2004,to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Gloria L. Denson, Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, STOP 0783, South Building, Washington, DC 20250, Telephone 202–720–1474. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Title: Section 502 Rural Housing Demonstration Program.

OMB Number: 0575–0114.

Expiration Date of Approval: October 31, 2004.

Type of Request: Extension of a currently approved information collection.

Abstract: Under section 506 (b), RHS may provide loans for innovative housing units and systems which do not meet existing published standards, rules, regulations or policies. The intended effect is to increase the availability of affordable rural housing for low-income families through innovative designs and systems.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 80 hours to complete the application, Proposal Content and Criteria, including additional material, specifications and blueprints.

Respondents: Business or other for profit.

Estimate Number of Respondents: 25.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,000 hours.

Copies of this information collection can be obtained from Brigitte Sumter, Regulations and Paperwork Management Branch, at (202) 692–0042.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimates of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, cr other technological collection techniques or other forms of information technology. Comments may be sent to Brigitte Sumter, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 19, 2004.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 04–7698 Filed 4–5–04; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Farm Service Agency Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service (RHS) and Farm Service Agency (FSA), USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agencies intention to request an extension for a currently approved information collection in support of the programs for Form RD 1940–59, "Settlement Statement."

DATES: Comments on this notice must be received by June 7, 2004 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Gale Richardson, Loan Specialist, Single Family Housing Direct Loan Division, Rural Housing Service, U.S. Department of Agriculture, Mail STOP 0783, 1400 Independence Ave., SW., Washington, DC 20250–0783, Telephone 202–720–1459. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Title: Form RD 1940–59, "Settlement Statement."

OMB Number: 0575–0088.

Expiration Date of Approval: October 31, 2004.

Type of Request: Extension of a currently approved information collection

Abstract: The Agencies are requesting an extension of the OMB clearance for Form RD 1940–59, "Settlement Statement." The Real Estate Settlement Procedures Act (RESPA), as amended, required the disclosure of real estate settlement costs to home buyers and sellers. The Secretary of the Department of Housing and Urban Development (HUD) was instructed by the RESPA to develop a standard form for the

statement of settlement costs to be used for all federally related transactions. Form RD 1940–59 is similar to the HUD–1 Settlement Statement used by HUD, the Veterans Administration, and the private mortgage industry, with some minor adaptations acceptable under RESPA.

Form RD 1940–59 is completed by Settlement Agents, Closing Attorneys, and Title Insurance Companies performing the closing of RHS loans and credit sales used to purchase or refinance Section 502 Housing, Rural Rental Housing and Farm Labor Housing. The same parties performing the closing of FSA Farm Ownership loans and credit sales also complete the form. The information is collected to provide the buyer and seller with a statement detailing the actual costs of the settlement services involved in the Agencies financed real estate transactions.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .50 hours per response.

Respondents: Settlement Agents, Closing Attorneys, and Title Insurance Companies performing the closing of the Agencies loans and credit sales.

Estimated Number of Respondents: 14,909.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 14,909.

Estimated Total Annual Burden on Respondents: 7,455 hours.

Copies of this information collection can be obtained from Tracy Givelekin, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to Tracy Givelekin, Regulation and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 3, 2004.

Arthur A. Garcia,

Administrator, Rural Housing Service.

Dated: February 29, 2004.

James Little,

Administrator, Farm Service Agency.

[FR Doc. 04–7700 Filed 4–5–04; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for Fire and Rescue Loans.

DATES: Comments on this notice must be received by June 7, 2004 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Derek L. Jones, Loan Specialist, Community Programs Division, RHS, U.S. Department of Agriculture, Stop 0787, 1400 Independence Avenue, SW., Washington, DC 20250–0787. Telephone (202) 720–1504.

SUPPLEMENTARY INFORMATION:

Title: Fire and Rescue Loans.

OMB Number: 0575–0120.

Expiration Date of Approval: September 30, 2004.

Type of Request: Extension of a currently approved information collection.

Abstract: The Fire and Rescue Loan program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of community facilities for public use in rural areas and is covered by 7 CFR 1942–C. The primary regulation for administering the Community Facilities program is 7 CFR 1942–A (OMB Number 0575–0015) that outlines eligibility, project feasibility, security, and monitoring requirements.

The Community Facilities fire and rescue program has been in existence for many years. This program has financed a wide range of fire and rescue projects varying in size and complexity from construction of a fire station with fire fighting and rescue equipment to financing a 911 emergency system. These facilities are designed to provide fire protection and emergency rescue services to rural communities.

Information will be collected by the field offices from applicants, borrowers, and consultants. This information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use funds for authorized purposes. Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.15 hours per response.

Respondents: Not-for-profit institutions, State, local, or tribal governments.

Estimated Number of Respondents: 1,544.

Estimated Number of Responses per Respondent: 5.33.

Estimated Total Annual Burden on Respondents: 8,232 hours.

Copies of this information collection can be obtained from Brigitte Sumter, Regulations and Paperwork Management Branch, (202) 692–0042.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Housing Service (RHS), including whether the information will have practical utility; (b) the accuracy of RHS" estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Brigitte Sumter, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250. All responses to this notice will be summarized and included in the

request for OMB approval. All comments will also become a matter of public record.

Dated: March 16, 2004.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 04–7701 Filed 4–5–04; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Request for Proposals (RFP): Demonstration Program for Agriculture, Aquaculture, and Seafood Processing and/or Fishery Worker Housing Grants

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces the availability of funds, the timeframe to submit proposals, and the guidelines for proposals for agriculture, aquaculture, and seafood processing and/or fishery worker housing grants in the States of Alaska, Mississippi, Utah, and Wisconsin. Division A of Public Law 108–199 (Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2004) authorizes RHS to establish a demonstration program to provide financial assistance (grants) for processing and/or fishery worker housing in the States of Alaska, Mississippi, Utah, and Wisconsin. This RFP requests proposals from qualified private and public nonprofit agencies, non-profit cooperatives, state and local governments, and tribal organizations in Alaska, Mississippi, Utah, and Wisconsin to construct housing for agriculture, aquaculture, and seafood processing and/or fishery workers. Any one project may not receive grant funds of more than $1 million from this program. At least one project in each of the four States will be funded under this program (provided that a proposal is received from an eligible applicant in each of the four States and their proposals meet the requirements of this RFP). Housing facilities constructed under this RFP are expected to increase the supply of housing for agriculture, aquaculture, and seafood processing and/or fishery workers in markets where adequate housing is not available.

DATES: The deadline for receipt of all applications in response to this RFP is 5 p.m., eastern standard time, on July 6, 2004. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), Cash on Delivery (COD), and postage due applications will not be accepted.

ADDRESSES: Applications should be submitted to the USDA-Rural Housing Service, Attention: Douglas MacDowell, Senior Loan Specialist, USDA, Rural Housing Service, Multi-Family Housing Processing Division, STOP 0781, Room 1263, 1400 Independence Ave., SW., Washington, DC 20250–0781. RHS will date and time certify incoming applications to evidence timely receipt and, upon request, will provide the applicant with a written acknowledgement of receipt.

FOR FURTHER INFORMATION CONTACT: For further information and an application package, including all required forms, contact Douglas MacDowell, Senior Loan Specialist, USDA, Rural Housing Service, Multi-Family Housing Processing Division, Stop 0781, Room 1263, 1400 Independence Avenue, SW., Washington, DC 20250–0781, telephone (202) 720–1627. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by RHS. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *." (44 U.S.C. 3502(3)(A)) Because this RFP will receive less than 10 respondents, the Paperwork Reduction Act does not apply.

General Information

The agriculture, aquaculture, and seafood processing and/or fishery worker housing grants authorized by Public Law 108–199 are for the purpose of developing a housing demonstration program for agriculture, aquaculture, and seafood processing and/or fishery worker housing in markets that have a demonstrated need for housing for such workers. Under Public Law 108–199, RHS has the authority to award $4,970,500 in grant funds for a housing demonstration program for agriculture, aquaculture, and seafood processing and/or fishery workers in Alaska, Mississippi, Utah, and Wisconsin.

I. Purpose

Public Law 108–199 authorized funds to the Department to implement a demonstration grant program for the construction of housing for agriculture, aquaculture, and seafood processing and/or fishery workers in Alaska, Mississippi, Utah, and Wisconsin.

The demonstration program has been designed to increase the supply of rental housing for a growing segment of the population whose needs are not currently being met. The program is expected to provide housing opportunities for processing workers in markets that cannot support other forms of conventional and government housing models. Grantees may not require any occupant of the housing or related facilities, as a condition of occupancy, to work or be employed by any particular processor, fishery, or other place, or work for or be employed by any particular person, firm, or interest.

Developers of housing under this program will receive a grant of up to 80% of the Total Development Cost (TDC) of the project. TDC includes all hard costs, soft costs, initial operating reserves, administrative fees, furnishings and equipment, and related facilities.

Housing constructed under this program may not receive RHS Rental Assistance or Operating Subsidies authorized under 42 U.S.C.1490a for payment of tenant rents. Project financial models should be structured to work without rental subsidies while keeping rents affordable for the target population.

Projects should be located close to tenants' workplaces and services as much as feasible. Location of the project is not limited to rural areas as defined in 42 U.S.C. 1490.

II. Project Threshold Criteria

All applications must meet the minimum threshold requirements contained in this RFP. The threshold criteria are as follows:

A. Occupancy Requirements

Eligibility for residency in facilities constructed under this RFP is limited to individuals and families who earn at least 40% of their income from work as an agriculture, aquaculture, or seafood processing and/or fishery worker and earn less than or equal to 60% of the National Median Income for a family of four as reported by the U.S. Census Bureau. Residents must be United States citizens or be legally admitted for permanent residence.

B. Eligible Grantees

Eligibility for grants under this notice is limited to private and public nonprofit agencies, non-profit cooperatives, state and local governments, and tribal organizations. Applicants must possess the experience, knowledge, and capacity to develop affordable multifamily housing in rural areas. Applicants will not be considered as eligible applicants if they have previously been selected for similar funding and have not carried out the purposes of that grant as of the closing date of this RFP.

C. Grant Limit

A grant under this RFP may fund up to and including 80% of a project's TDC. TDC includes all hard costs, soft costs, initial operating reserves, administrative fees, furnishings and equipment, and related facilities. In addition, any one project may not receive grant funds of more than $1 million from this program. This program will fund at least one project in Alaska, Mississippi, Utah, and Wisconsin (provided that a proposal is received from an eligible applicant in each of the four States and their proposals meet the requirements of this RFP).

D. Equity Contributions and Leveraged Funds

As stated above, a grant may fund up to 80% of the TDC which leaves at least 20% of the TDC to be funded from other sources. The applicant is encouraged to seek funding from sources with favorable rates and terms in order to keep rents within the reach of the target population. For this reason, additional selection points will be given to proposals that have funding with favorable rates and terms. Examples of such funding sources may include the Federal Home Loan Bank, the U.S. Department of Housing and Urban Development, or a State, county, or local government. Conventional loans may also be used, however, the rates and terms may not be in excess of what is common in the housing industry. For this purpose, the interest rate of any such loan may not exceed 200 basis points above the 10-year Treasury bond rate as of the date of grant closing. The term of any loan must be a minimum of 10 years (with a balloon) and it must be amortized over a 30 year period. Longer terms are preferred. The objective in setting these limits is to create affordable rents for the tenants. In each case, equity contributions and loans must be contributed and disbursed prior to the disbursement of any grant funds from the Agency.

E. Eligible Costs

Eligible costs for grants under this RFP include all project related costs including all hard costs, soft costs, initial operating reserves, administrative fees, furnishings and equipment, and related facilities. Eligible costs also include technical assistance received from a non-identity of interest nonprofit organization with housing and/or community development experience, to assist the applicant in the development and packaging of its grant docket and project. Eligible costs for technical assistance is limited to those that are allowed under 7 CFR 1944.158(i) and may not exceed 4 percent of the TDC.

F. Term of Use

The project will remain in use for the intended purpose for the life of the project as required under 7 CFR parts 3015, 3016, or 3019, as applicable. These provisions require the grant recipient to use the real property for the authorized purpose of the project as long as it is needed. The type of security instrument will be determined, prior to grant closing, by the Agency's Regional Office of the General Counsel.

G. Site Control

The developer must own or demonstrate evidence of site control of the proposed site. At a minimum, site control should extend 180 days past the date of application submission and is preferred to be for one year. Proof of site control should be submitted with the application. This can be in the form of a contract of sale, option agreement, long-term lease agreement, or deed or other documentation of ownership by the applicant. The applicant must exercise care in site selection. Site approval is subject to completion of an environmental assessment by RHS and sites with environmental problems will increase the amount of time necessary to complete this assessment. Proposals which will directly or indirectly impact protected resources, such as floodplains or wetlands, can require consideration of alternative sites, changes in project design, or the implementation of other mitigation measures to lessen adverse effects on the environment.

H. Zoning

A zoning designation adequate to develop the type of housing and number of units proposed is required. Evidence of proper zoning must be included with the application. Where there is a clear plan to have a site rezoned, a narrative explaining the situation and detailing the process and timeline for rezoning may be accepted.

I. Utilities

Adequate capacity to connect the project to water, sewer, electricity, and telephone services must be demonstrated. Letters from utility providers must be included in the application. If on-site utilities are proposed, engineering reports indicating correct soil types, adequate land capacity, etc. must be included in the application.

J. Appraisals

As required by 7 CFR 3015.56, if land is being donated as part of the grantee's contribution, the market value must be set by an independent appraiser and certified by a responsible official of the grantee. An appraisal will also be required if project funds are used to purchase land.

K. Market Demand

Projects funded under this RFP shall be in markets with demonstrated need for agriculture, aquaculture, and seafood processing and/or fishery worker housing. All applications should include documentation of this need in the form of a market analysis, survey, or other documentation of need.

L. Design Characteristics

Housing constructed under this demonstration may be of any architectural style as long as it is permitted by local zoning laws, meets all applicable building codes, and fits with the character of the surrounding community. However, the facilities should not be of extravagant design and their size must be commensurate with the needs of the workers who will occupy the housing facility. When planning units for families, lower-density building design and layout is normally desirable. Housing should be designed in such a manner that it will be decent, safe, sanitary, and modest in size and cost. Actual plans, specifications, and contract documents must be prepared in accordance with 7 CFR part 1924, subpart A.

Building design is subject to the requirements of section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Fair Housing Act, and any state or local accessibility requirements. For these reasons, buildings must be designed and constructed in accordance with the Uniform Federal Accessibility Standards, the Americans with Disabilities Act Accessibility Guidelines, the Fair Housing Act Accessibility Guidelines, and any state or local standards.

Particular attention should be given to 7 CFR 1924.13 which gives

supplemental requirements for complex construction. All construction contracts must be awarded on the basis of competitive bidding unless an exception is granted in accordance with 7 CFR 1924.13. In either case, the Contractor must be reliable and experienced in the construction of projects of similar size, design, scope, and complexity. All construction that is financed with grant funds from RHS is subject to the provisions of the Davis-Bacon Act (refer to 29 CFR parts 1, 2, and 5). In addition, the construction contracts must contain the nondiscrimination language, in its entirety, that is required by E.O. 11246 (refer to 41 CFR 60–1.4(b) subparagraphs 1–7 for the specific language). The plans and specifications, including the construction contract, must be reviewed and accepted by RHS prior to the start of construction.

Until the plans and specifications have been approved and the grant is closed, construction work should not be started. When there are construction changes that affect design, costs, or time, the change must be documented as a contract change order and must be signed by the borrower, borrower's architect, contractor, and Agency representative before the work involved in the change is started or the costs are included in a payment request. Changes that do not affect design, costs, or time, may be handled as field orders and do not require Agency approval.

RHS will conduct periodic inspections during construction to protect the interest of the Government.

M. Civil Rights

Title VI of the Civil Rights Act of 1964 prohibits recipients of Federal financial assistance from discriminating in their programs and activities on the basis of race, color, or national origin. It also requires recipients (1) to sign a civil rights assurance agreement (*i.e.*, Form RD 400–4), (2) to collect statistical data on race and national origin, (3) submit to the Agency timely, complete, and accurate compliance reports so that the Agency can determine compliance with program regulations and applicable civil rights laws, and (4) to disseminate information to the public stating that the recipient operates a program that is subject to the non-discrimination requirements of Title VI and briefly explain the procedures for filing complaints.

Borrowers and grantees must take reasonable steps to ensure that Limited English Proficiency (LEP) persons receive the language assistance necessary to afford them meaningful access to USDA programs and activities, free of charge. Failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination.

Section 504 of the Rehabilitation Act of 1973 prohibits recipients of Federal financial assistance from discriminating against persons with disabilities and requires recipients to make their programs and activities accessible to, and usable by, persons with disabilities.

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988) prohibits discrimination because of race, color, religion, sex, handicap, familial status, and national origin in the sale, rental, or advertising of dwellings in providing services or availability of residential real estate transactions.

The Age Discrimination Act of 1975 prohibits recipients of Federal financial assistance from discriminating in their programs and activities on the basis of age.

As part of the grant proposal, the applicant must provide (1) a notice of all civil rights law suits filed against it; (2) a description of assistance applications they have pending in other Agencies and of Federal assistance being provided; (3) a description of any civil rights compliance reviews of the applicant during the preceding two years; and (4) a statement as to whether the applicant has been found in noncompliance with any civil rights requirements.

Successful applicants have a duty to affirmatively further fair housing. Proposals will include specific steps that the applicant will take to promote, ensure, and affirmatively further fair housing.

In the event Federal financial assistance will be used to obtain or improve real property, instruments of conveyance shall contain a covenant running with the land assuring non-discrimination for the period the real property is used for the same or similar purpose the Federal financial assistance is extended or for another purpose involving the provisions of similar services or benefits. The covenant shall be as follows:

- "The property described herein was obtained or improved with Federal financial assistance and is subject to the provisions of Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the regulations issued thereto. This covenant is in effect for as long as the property continues to be used for the same or similar purpose for which the financial assistance was extended, or for as long as the above recipient owns it, whichever is longer."

Contractors must comply with the Equal Employment Opportunity Executive Order 11246, as amended, and construction contracts must contain the specific non-discrimination language, in its entirety, that is required by the Executive Order.

Before funds are disbursed, a pre-award civil rights compliance review will be conducted by the Agency to determine whether the applicant is, and will be, in compliance with Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, and the Age Discrimination Act of 1975. In addition, the Agency will conduct a Civil Rights Impact Analysis.

N. Environmental Requirements

All applications are subject to satisfactory completion of the appropriate level of environmental review by RHS in accordance with 7 CFR part 1940, subpart G. For the purposes of 7 CFR part 1940, subpart G, applications under this RFP will be considered as applications for the financing of multi-family housing.

All applications are subject to the requirements of Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations."

All applications are subject to the flood insurance requirements of 7 CFR part 1806, subpart B.

O. Applicable Regulations

All grants funded under this program must meet the requirements of 7 CFR part 3015 and parts 3016 or 3019, as applicable, Rural Development Instruction 1924–A (7 CFR part 1924, subpart A), and 1924–C (7 CFR part 1924, subpart C).

P. Dun and Bradstreet Data Universal Numbering System (DUNS) Number

As required by the Office of Management and Budget (OMB), all grant applicants must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711. Additional information concerning this requirement is provided in a policy directive issued by OMB and published in the **Federal Register** on June 27, 2003 (68 FR 38402–38405).

III. Proposal Format

A. Proposals must include the following:

1. Standard Form (SF)–424, "Application for Federal Assistance."

2. Applicant's DUNS number.

3. Documentation to evidence the applicant's status as a private or public nonprofit agency, nonprofit cooperative, state or local government, or tribal organization.

4. Applicant's Financial Statements.

5. Form HUD 935.2, "Affirmative Fair Housing Marketing Plan."

6. Form RD 1944–30, "Identity of Interest (IOI) Disclosure Certification" and Form RD 1944–31, "Identity of Interest (IOI) Qualification."

7. Form HUD 2530, "Previous Participation Certification."

8. Form RD 1924–13, "Estimate and Certificate of Actual Cost."

9. Form RD 1930–7, "Multiple Family Housing Project Budget" including rent schedule and operating and maintenance budget.

10. Form RD 1940–20, "Request for Environmental Information."

11. A narrative statement that documents the applicant's experience, knowledge, and capacity to develop multifamily housing.

12. If the applicant has previously received, or is currently receiving, a similar grant, the applicant must provide documentation that they have successfully carried out the purposes of that grant as of the closing date of this RFP.

13. A Sources and Uses Statement showing all sources of funding included in the proposed project. The terms and schedules of all sources included in the project should be included in the Sources and Uses Statement.

14. Applicant organizational documents (articles of incorporation, by laws, etc.).

15. A narrative description of the proposed project, including a description of site, housing, amenities, *etc.*

16. A location map showing the site and surrounding services.

17. Evidence of site control.

18. Evidence of proper zoning or explanation of how proper zoning will be achieved.

19. Evidence of utilities availability or evidence that the site is suitable for on-site utilities.

20. A description of any related facilities including justification and cost of such facilities.

21. Schematic design drawings including a site plan, building elevations, and floor plans.

22. Outline specifications.

23. A statement agreeing to pay any cost overruns from the applicant's own sources.

24. Documentation of need in the form of a market study, survey, or other sources.

25. A list of all other funding sources and conditional commitments from those funding sources. The conditional commitments must provide the costs of those funds (*i.e.*, rates, terms, fees, *etc.*).

26. If seeking points under Evaluation Criteria, Paragraph IV.B., a copy of the Tenant Services Plan and letters from the service provider which document that they will provide the service on-site and on a reoccurring basis.

B. The above items are required for the RFP response. If a proposal is accepted for further processing, there will be additional submittals required.

IV. Evaluation Criteria

A. Leveraging (Up to 40 Points)

Points will be awarded based on the percent of non-RHS funds specifically identified and designated to supplement RHS funds. Leveraged funds may include donated land. In the case of donated land, the amount of leveraging will be determined by an opinion of value to be prepared by an independent, licensed appraiser. Points will be awarded as follows:

Percent of leveraging	Points
Over 50%	10
21% to 50%	5

Additional points will be awarded based on the cost of the leveraged funds. A maximum of 30 points will be awarded under this criteria. If a proposal has multiple funding sources, points will be awarded proportionately to the amount that each funding source provides, as a percentage of the applicant's contribution. Points will be awarded as follows:

Cost of leveraged funds	Points
Grant funds without any repayment costs	30
Loans with interest rates below the 10-year Fed bond rate	25
Loans with interest rates above the 10-year Fed bond rate (but less then 101 basis points above it)	15
Loans with interest rates more than 100 basis points above the Fed bond rate (but no more than 200 points above it)	5

B. Tenant Services (Up to 25 Points)

Points will be awarded based on the presence of and extent to which a tenant services plan exists that clearly outlines services that will be provided to residents of the proposed project.

These services include but are not limited to:

1. Day care or before and after school child care.

2. Computer learning centers.

3. Homeownership and budget counseling.

4. Parenting programs for young parents (such as family support centers), parenting skills sessions for all interested parents, and parent and child activities.

5. Literacy programs (such as book clubs, toddler reading programs, story groups), libraries and book sharing groups or centers.

6. Art activities or art centers for children that include painting, photography, ceramics, etc.

7. Health education and referral or health care outreach centers.

8. Job training and preparation centers.

9. Housing services and/or community coordinators.

10. Mentoring programs where young adults mentor adolescents or more established adults mentor other adults.

11. Community meeting centers.

12. Recreation centers located within housing complexes.

13. Nutritional services.

14. Transportation services.

A Tenant Services Plan must be submitted with the application to receive points under this criteria. In addition, letters from the service provider must be submitted. The letters from the service providers must document that they will provide the services at the project site and on a regular, reoccurring basis. In addition, the proposed design of the housing must include the necessary physical space for the services to be provided on-site. Unless each of the above requirements are met, points will not be awarded. Five points will be awarded for each resident service included in the tenant services plan up to a maximum of 25 points.

V. Review Process

All proposals will be evaluated by a RHS grant committee. The grant committee will make recommendations to the RHS Administrator concerning preliminary eligibility determinations and for the selection of proposal for further processing, based on the selection criteria contained in this RFP and the availability of funds. The Administrator will inform applicants of the status of their proposals within 30 days of the closing date of the RFP.

If the proposal is accepted for further processing, the applicant will be

expected to submit additional information prior to grant obligation. In addition, RHS must complete the appropriate level of environmental review prior to grant obligation. The applicant is expected to assist RHS, as necessary, in the development of this environmental review. In the event that an application is selected for further processing and the applicant either declines or reduces the size of their grant request, the RHS National Office will, at its discretion, either select the next highest ranked unfunded proposal or not utilize the funds for this demonstration project.

Prior to grant obligation, grant recipients shall enter into the grant agreement provided as Appendix A to this RFP.

The applicant will have one year from the date of the obligation of grant funds to begin construction.

VI. RHS Monitoring

During construction, RHS will take part in periodic progress meetings at the project site and shall inspect completed work. RHS approval of work completed must be given before grant funds can be disbursed for that work.

RHS monitoring shall continue throughout the useful life of the project or until the grant is terminated under provisions established in 7 CFR part 3015 and parts 3016 or 3019, as applicable. Monitoring shall consist of initial and annual tenant certifications, civil rights compliance reviews, triennial physical inspections, annual proposed and actual operating budgets, and annual audits. If other funding sources involved in the project require reporting, those formats may be used in place of RHS methods as long as those formats meet RHS requirements.

Tenants and grantees must execute an Agency-approved tenant certification form establishing the tenant's eligibility prior to occupancy. In addition, tenant households must be recertified and must execute a tenant certification form at least annually.

Grantees will submit to a triennial (once every three years) physical inspection of the project. RHS will inspect for health and safety issues, deferred maintenance, and other physical problems that can endanger the provision of decent, affordable housing to the target population on a long-term basis.

Annual proposed and actual operating and maintenance budgets will be required to insure that all project needs are being met and all RHS guidelines are being followed. The form of operating and maintenance budgets will be designated by RHS.

The grantee must submit annual audits of the project finances to RHS in accordance with the requirements established by OMB, in accordance with in 7 CFR part 3052.

Dated: March 31, 2004.

Arthur A. Garcia,

Administrator, Rural Housing Service.

Appendix A—Processing and/or Fishery Worker Housing Grant Agreement

United States Department of Agriculture
Rural Housing Service

Processing and/or Fishery Worker Housing Grant Agreement

This Grant Agreement (Agreement) dated _____, _____, is a contract for receipt of grant funds under the Processing and/or Fishery Worker Housing Grant Demonstration Program authorized in the Consolidated Appropriations Act, 2004 (Pub. L. 108–199). This grant will be administered under the Request for Proposals (RFP): Demonstration Program for Agriculture, Aquaculture, and Seafood Processing and/or Fishery Worker Housing Grants published in the **Federal Register** on April 6, 2004, and the regulations governing the Farm Labor Housing Grant program (7 CFR part 1944, subpart D and 7 CFR part 1930, subpart C). These requirements do not supersede the applicable requirements for receipt of Federal funds stated in 7 CFR parts 3015, "Uniform Federal Assistance Regulations," 3016 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," or 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations." Further, all relevant regulatory requirements apply to applicants whether contained in here or not.

Between

_____, a private or public nonprofit agency, nonprofit cooperative, state or local government, or tribal organization (Grantee) and the United States of America acting through the Rural Housing Service (RHS), Department of Agriculture, (Grantor)

Witnesseth:

All references herein to "Project" refer to a Processing and/or Fishery Worker Housing facility to serve a rural community generally known as _____. The principal amount of the grant is $_____ (Grant Funds) which is _____ percent of Project costs.

Whereas

Grantee has determined to undertake the acquisition, construction, enlargement, capital improvement, or purchase of equipment for a project with a total estimated cost of $_____. Grantee is able to finance and has committed $_____ of Project costs.

The Grantor has agreed to give the Grantee the Grant Funds, subject to the terms and conditions established by the Grantor. Provided, however, that any Grant Funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement or the applicable regulation.

As a condition of this Agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those contained in 7 CFR 3015.205(b), which are incorporated into this Agreement by reference, and such other statutory provisions as are specifically contained herein.

Now, therefore, in consideration of said grant, and completing and reviewing the collection of information

Grantee agrees that Grantee will:

A. Cause said Project to be constructed within the total sums available to it, including Grant Funds, in accordance with any architectural or engineering reports, and any necessary modifications, prepared by Grantee and approved by Grantor.

B. Provide periodic reports as required by Grantor and permit periodic inspection of the Project by a representative of the Grantor. For grant-only Projects, Form SF–269, "Financial Status Report," and a project performance report will be required on a quarterly basis (due 15 working days after each calendar quarter). A final project performance report will be required with the last "Financial Status Report." The final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. The project performance reports shall include, but are not limited to, the following:

1. A comparison of actual accomplishments to the objectives established for that period;

2. Reasons why established objectives were not met;

3. Problems, delays, or adverse conditions which will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accomplished by a statement of the action taken or planned to resolve the situation; and

4. Objectives and timetables established for the next reporting period.

C. Manage, operate, and maintain the facility, including this Project if less than the whole of said facility, continuously in an efficient and economical manner.

D. Not use grant funds to replace any financial support previously provided or assured from any other source. The Grantee agrees that the Grantee's level of expenditure for the Project shall be maintained and not reduced as a result of Grant Funds.

E. Make the public facility or services available to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital

status, or physical or mental disability at reasonable rates, including assessments, taxes, or fees. Grantee may make modifications as long as they are reasonable and nondiscriminatory.

F. Execute any agreements required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, that agreement applies equally to the grant and another identical agreement need not be executed in connection with this grant.

G. Repay to Grantor the Grant Funds with any legally permitted interest from the date of any default under its representations or agreements contained in this instrument. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Agreement may be enforced by Grantor, at its option and without regard to prior waivers of previous defaults by Grantee, by judicial proceedings to require specific performance of the terms of this Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Agreement and the laws and regulations under which this grant is made.

H. Use the real property including land, improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the Grantee subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain Grantor's approval to use the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed, as provided in Paragraphs H.1 and H.2 above, the Grantee shall request disposition instructions from the Grantor. The Grantor will observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal government in an amount computed by applying the Federal percentage of participation in the cost of the original Project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor and pay the Federal government an amount computed by applying the Federal percentage of participation in the cost of the original Project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(c) The Grantee may be directed to transfer title to the property to the Federal government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or Project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

I. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with Grant Funds. Equipment means tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A Grantee may use its own definition of equipment provided that such definition would at least include all equipment as defined in this Paragraph.

1. Use of equipment.

(a) The Grantee shall use the equipment in the Project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other federally sponsored activities, if any, in the following order of priority:

(i) Activities sponsored by the Grantor.

(ii) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the project for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the property was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the property as provided in Paragraph I.1.(a) and (b), the equipment may be sold or used for other activities in accordance with the following standards:

(a) Equipment with a current fair market value of less than $5,000. The Grantee may use the property for other activities without reimbursement to the Federal government or sell the property and retain the proceeds.

(b) Equipment with a current fair market value of $5,000 or more. The Grantee may retain the property for other uses provided that compensation is made to the Grantor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original Project to the current fair market value of the property. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the Grantor.

(c) The Grantor shall determine whether the equipment can be used to meet RHS or its successor agency's requirements. If no such requirements exist, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor to determine whether a requirement for the equipment exists in other Federal agencies. The Grantor shall issue instructions to the Grantee no later than 120 days after the Grantee's request and the following procedures shall govern:

(i) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share 10 percent of the proceeds or $500, whichever is less, for the Grantee's selling and handling expenses.

(ii) If the Grantee is instructed to ship the property elsewhere, the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant Project or program to the current fair market value of the equipment plus any reasonable shipping or interim storage costs incurred.

(iii) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall include:

(a) Property records which accurately provide for: a description of the equipment; manufacturer's serial number or other identification number; acquisition date and cost; source of the equipment; percentage (at the end of budget year) of Federal participation in the cost of the Project for which the equipment was acquired; location, use, and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need for the equipment.

(c) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described equipment (use continuation sheets as necessary).

J. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes.

4. Accounting records supported by source documentation.

K. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photocopies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

L. Provide either an audit report, annual financial statements, or other documentation prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations, and this Agreement.

M. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or an instrumentality of a State shall not be held accountable for interest earned on Grant Funds pending their disbursement.

N. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in Paragraphs H and I.

O. Not duplicate other Project purposes for which monies have been received, are committed, or are applied to from other sources (public or private).

P. From construction completion throughout the term of the grant (useful life of the facility), the grantee shall submit on an annual basis, or as needed, the following:

1. Project Operating Budget to be completed on Form RD 1930–7 "Multiple Family Housing Project Budget." All sections of the budget are to be completed including, but not limited to, proposed and actual income and expense estimates, operating and maintenance expenses, special account statements (reserve, tax and insurance, and security deposit accounts) and capital improvement budgets.

2. Annual Tenant Certification to be completed on Form RD 1944–8, "Tenant Certification." This document shall be the official means by which tenant eligibility is established. This document must be completed by each tenant and the Grantee at the time of initial move-in, following a fluctuation in tenant income or change in employment sector (processing to non-processing), and on each annual lease anniversary. The Grantee shall verify tenant income and employment sector with pay stubs, employer letters, or other documents which can verify the tenant's employment in agriculture, aquaculture, and seafood processing and/or fishery work and the tenants household income.

3. Other forms and reports as required by Federal, State, or local statute.

Q. Use of Real Property. The facility shall remain in use for its initially designated purpose of providing housing for agriculture, aquaculture, and seafood processing and/or fishery workers throughout the useful life of the facility or until such facility is no longer needed in the project market area. Grantee will not require any occupant of the housing or related facilities, as a condition of occupancy, to work or be employed by any particular processor, fishery, or other place, or work for or be employed by any particular person, firm, or interest. When no longer needed, RHS may approve the use of the property for other uses. These alternative uses are limited to:

1. Activities supported by other Federal grants or assistance agreements.

2. Activities not supported by other Federal grants or assistance agreements but having purposes consistent with the purposes of the legislation under which the Processing and/or Fishery Worker Housing Grant Demonstration Program was made.

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed $____ which it will advance to Grantee to meet but not to exceed __ percent of the Project development costs in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the Project and coordinating the plan with local official comprehensive plans for essential community facilities and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time, may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the Project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof, Grantee has this day, authorized and caused this Agreement to be executed

by

_____

and attested with its corporate seal affixed (if applicable) by

_____

Attest:

_____

By _____

(Title) _____

United States of America Rural Housing Service

By _____

(Name) _____

(Title) _____

[FR Doc. 04–7702 Filed 4–5–04; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Housing Demonstration Program

AGENCY: Rural Housing Service, United States Department of Agriculture (USDA).

ACTION: Notice of Funding for the Rural Housing Demonstration Program.

SUMMARY: The Rural Housing Service (RHS) announces the availability of housing loan funds for Fiscal Year (FY) 2004 for the Rural Housing Demonstration Program. For FY 2004, RHS has set aside $2 million for the Innovative Demonstration Initiatives. The Agency is soliciting and accepting proposals from individuals for the Housing Demonstration program under section 506(b) of title V of the Housing Act of 1949, which provide loans to low income borrowers to purchase innovative housing units and systems that do not meet existing published standards, rules, regulations, or policies.

The intended effect is to increase the availability of affordable Rural Housing (RH) for low-income families through innovative designs and systems.

EFFECTIVE DATE: April 6, 2004.

FOR FURTHER INFORMATION CONTACT: Gloria L. Denson, Senior Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, STOP 0783, 1400 Independence Ave. SW., Washington, DC 20250–0783, Telephone (202) 720–1474. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Under current standards, regulations, and policies, some low-income rural families lack sufficient income to qualify for loans to obtain adequate housing. Section 506(b) of title V of the

Housing Act of 1949, 42 U.S.C. 1476, authorizes a housing demonstration program that could result in housing that these families can afford. Section 506(b) imposes two conditions: (1) That the health and safety of the population of the areas in which the demonstrations are carried out will not be adversely affected, and (2) that the aggregate expenditures for the demonstration may not exceed $10 million in any fiscal year. Grant funds for these proposals are not authorized.

The objective of the demonstration programs is to test new approaches to constructing housing under the statutory authority granted to the Secretary of Agriculture. Rural Development will review each application for completeness and accuracy. Some demonstration proposals may not be completely consistent with 7 CFR part 3550-Direct Single Family Housing Loans and Grants regulation. Under section 506(b) of the Housing Act of 1949, the Agency may provide loans for innovative housing design units and systems which do not meet existing published standards, rules, regulations, or policies. The innovative housing units and systems should be creative, affordable, durable, energy efficient, and include a diversity of housing types. Examples of eligible proposals include, but are not limited to: new or improved energy-savings houses, roofing that cools, building techniques that cut costs and improve the quality of rural housing.

The Equal Credit Opportunity Act and Title VIII of the Civil Rights Act of 1968 provide that a program such as this be administered affirmatively so that individuals of similar low-income levels in the housing market area have housing choices available to them regardless of their race, color, religion, sex, national origin, familial status and disability. Under Section 504 of the Rehabilitation Act of 1973 Rural Development makes reasonable accommodations to permit persons with disabilities to apply for agency programs. Executive Order 12898 requires the Agency to conduct a Civil Rights Impact Analysis on each project prior to loan approval. Also, the requirements of Executive Order 11246 are applicable regarding equal employment opportunity when the proposed contract exceeds $10,000.

Completed applications that have been determined to carry out the objectives of the program will be considered by the Rural Development State Director on a first come, first served basis based on the date a completed application was submitted. An application is considered complete only if the "Application for Approval of Housing Innovation" is complete in content, contains information related to the criteria and all applicable additional information required by the application form has been provided. All application packages must be in accordance with the technical management requirements and address the criteria in the Proposal Content. The application, technical management requirements, Proposal Content and Criteria and further information may be obtained from the Rural Development State office in each state. (See the State Office address list at the end of this notice or access the website at *http://www.rurdev.usda.gov/recd_map.html*.) Applicants submitting an incomplete application will be advised in writing of additional information needed for continued processing.

The following evaluation factors will not be weighted and are non-competitive. RHS, in its analysis of the proposals received, will consider whether the proposals will carry out the objectives of this demonstration effort in accordance with the following criteria:

A. Housing Unit Concept

1.A proposal must be well beyond the "idea" state. Sufficient testing must have been completed to demonstrate its feasibility. The proposal must be judged ready for full-scale field testing in a rural setting.

2. Ability of the housing unit to provide for the protection of life, property, and for the safety and welfare of the consumer, general public and occupants through the design, construction, quality of materials, use, and maintenance of the housing unit.

3. Flexibility of the housing units in relation to varying types of housing and varying site considerations.

4. Flexibility of the housing unit concept, insofar as it provides the ability to adjust or modify unit size and arrangements, either during design or after construction.

5. Efficiency in the use of materials and labor, with respect to cost in place, conservation of materials, and the effective use of labor skills. Potential for use in the Mutual Self-Help housing program will be considered.

6. Selection of materials for durability and ease of maintenance.

7. Concepts for the effective use of land and development.

B. Organization Capabilities

1. The experience and "know-how" of the proposed organization or individual to implement construction of the housing unit concept in relation to the requirements of RHS's housing programs.

2. The management structure and organization of the proposer.

3. The quality and diversity of management and professional talent proposed as "key individuals."

4. The management plan of how this effort will be conducted.

C. Cost and Price Analysis

1. The level of costs which are proposed, as they may compare with other proposals and be considered realistic for the efforts planned. Also, the quantity and level of detail in the information supplied.

2. Projected cost of "housing in place," with particular reference to housing for very low and low-income families.

The State Director will send an acceptable proposal to the National Office for concurrence by the RHS Administrator before the State Director may approve it. If the proposal is not selected, the State Director will so notify the applicant in writing, giving specific reasons why the proposal was not selected. The funds for the RH Demonstration program are available for section 502 single family housing applicants who wish to purchase an approved demonstration dwelling. Funds cannot be reserved or guaranteed under the demonstration housing concept. There is no guarantee that a market exists for demonstration dwellings, and this does not ensure that an eligible loan applicant will be available for such a section 502 RH dwelling. If there is no available RHS eligible loan applicant, the RH demonstration program applicant will have to advance funds to complete the construction of the demonstration housing, with the risk that there may be no RHS applicant or other purchaser from which the builder will recover his or her development and construction costs.

This program or activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons contained in 7 CFR part 3015, subpart V and RD Instruction 1940–J, "Intergovernmental Review of Rural Development Programs and Activities," this program or activity is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

All interested parties must make a written request for a proposal package to the State Director in the State in which the proposal will be submitted; RHS will not be liable for any expenses incurred by respondents in the development and submission of applications.

The reporting requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under Control Number 0575–0114.

Dated: March 19, 2004.

Arthur A. Garcia,

Administrator.

The following is an address list of Rural Development State Offices across the nation:

Alabama

Sterling Centre, 4121 Carmichael Road, Suite 601, Montgomery, AL 36106–3683, (334) 279–3400.

Alaska

Suite 201, 800 W. Evergreen, Palmer, AK 99645–6539, (907) 761–7705.

Arizona

Phoenix Corporate Center, 3003 N. Central Avenue, Suite 900, Phoenix, AZ 85012–2906, (602) 280–8700.

Arkansas

Room 3416, 700 W. Capitol, Little Rock, AR 72201–3225, (501) 301–3200.

California

Agency 4169, 430 G Street, Davis, CA 95616–4169, (530) 792–5800.

Colorado

Room E100, 655 Parfet Street, Lakewood, CO 80215, (720) 544–2903.

Delaware & Maryland

PO Box 400, 4607 S. DuPont Highway, Camden, DE 19934–9998, (302) 697–4300.

Florida & Virgin Islands

PO Box 147010, 4440 NW 25th Place, Gainesville, FL 32614–7010, (352) 338–3400.

Georgia

Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162.

Hawaii

Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8309.

Idaho

Suite A1, 9173 W. Barnes Drive, Boise, ID 83709, (208) 378–5600.

Illinois

2118 W. Park Court, Suite A, Champaign, IL 61821, (217) 403–6222, (217) 398–5412 for automated answer.

Indiana

5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100.

Iowa

873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663.

Kansas

PO Box 4653, 1303 SW First American Place, Suite 100, Topeka, KS 66604, (785) 271–2700.

Kentucky

Suite 200, 771 Corporate Drive, Lexington, KY 40503, (859) 224–7300.

Louisiana

3727 Government Street, Alexandria, LA 71302, (318) 473–7920.

Maine

PO Box 405, 967 Illinois Avenue, Suite 4, Bangor, ME 04402–0405, (207) 990–9110.

Massachusetts, Conn, Rhode Island

451 West Street, Amherst, MA 01002, (413) 253–4300.

Michigan

Suite 200, 3001 Coolidge Road, East Lansing, MI 48823, (517) 324–5100.

Minnesota

410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800.

Mississippi

Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4316.

Missouri

Parkade Center, Suite 235, 601 Business Loop 70 West, Columbia, MO 65203, (573) 876–0976.

Montana

Unit 1, Suite B, P. O. Box 850, 900 Technology Boulevard, Bozeman, MT 59715, (406) 585–2580.

Nebraska

Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5551.

Nevada

2100 California Street, Carson City, NV 89701–5336, (775) 887–1222.

New Jersey

Tarnsfield Plaza, Suite 22, 800 Midlantic Drive, Mt. Laurel, NJ 08054, (856) 787–7700.

New Mexico

Room 255, 6200 Jefferson Street, NE., Albuquerque, NM 87109, (505) 761–4950.

New York

The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400.

North Carolina

Suite 260, 4405 Bland Road, Raleigh, NC 27609, (919) 873–2000.

North Dakota

Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502–1737, (701) 530–2044.

Ohio

Federal Building, Room 507, 200 N. High Street, Columbus, OH 43215–2418, (614) 255–2400.

Oklahoma

Suite 108, 100 USDA, Stillwater, OK 74074–2654, (405) 742–1000.

Oregon

Suite 1410, 101 SW Main, Portland, OR 97204–3222, (503) 414–3300.

Pennsylvania

Suite 330, One Credit Union Place, Harrisburg, PA 17110–2996, (717) 237–2299.

Puerto Rico

IBM Building-Suite 601, 654 Munos Rivera Avenue, Hato Rey, PR 00918–6106, (787) 766–5095.

South Carolina

Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163.

South Dakota

Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1100.

Tennessee

Suite 300, 3322 W. End Avenue, Nashville, TN 37203–1084, (615) 783–1300.

Texas

Federal Building, Suite 102, 101 S. Main, Temple, TX 76501, (254) 742–9700.

Utah

Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Post Office Box 11350, Salt Lake City, UT 84147–0350, (801) 524–4320.

Vermont & New Hampshire

City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000.

Virginia

Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1550.

Washington

Suite B, 1835 Black Lake Blvd., SW., Olympia, WA 98512–5715, (360) 704–7740.

West Virginia

Federal Building, Room 320, 75 High Street, Morgantown, WV 26505–7500, (304) 284–4860.

Wisconsin 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600.

Wyoming

Federal Building, Room 1005, 100 East B, PO Box 820, Casper, WY 82602, (307) 261–6300.

[FR Doc. 04–7699 Filed 4–5–04; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on May 20, 2004 10 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Session:

1. Opening remarks by the Chairman.
2. Bureau of Industry and Security (BIS) and Export Administration update.
3. Export Enforcement update.
4. Presentation of papers or comments by the public.

Closed Session:

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservation are not accepted. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, EA/BIS MS: 1099D, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

A Notice of Determination to close meetings, or portions of meetings, of the PECSEA to the public on the basis of 5 U.S.C. 522(c)(1) was approved on October 8, 2003 in accordance with the Federal Advisory Committee Act.

For more information, call Ms. Carpenter on (202) 482–2583.

Dated: March 31, 2004.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 04–7717 Filed 4–05–04; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to a request by domestic interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube (welded pipe and tube) from Turkey. This review covers one producer/exporter of the subject merchandise, The Borusan Group (Borusan). We preliminarily determine that Borusan made sales below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the export price (EP) and the NV.

EFFECTIVE DATE: April 6, 2004.

FOR FURTHER INFORMATION CONTACT: Martin Claessens or Erin Begnal, at (202) 482–5451 or (202) 482–1442, respectively; AD/CVD Enforcement Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1986, the Department published in the **Federal Register** the antidumping duty order on welded pipe and tube from Turkey (51 FR 17784). On May 1, 2003, the Department published a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 23281 (May 1, 2003). On May 30, 2003, in accordance with 19 CFR 351.213(b), interested parties Allied Tube & Conduit Corporation, IPSCO Tubulars, Inc., and Wheatland Tube Company requested a review of Borusan.

On July 1, 2003, the Department published a notice of initiation of administrative review of the antidumping duty order on welded pipe and tube from Turkey, covering the period May 1, 2002, through April 30, 2003 (68 FR 39055). On January 6, 2004 the Department extended the deadline for the preliminary results until no later than March 31, 2004. *See Certain Welded Carbon Steel Pipe and Tube from Turkey: Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review* (69 FR 628). From March 1 through March 12, 2004, we conducted sales and cost verifications of Borusan's questionnaire response.

Scope of the Review

The products covered by this order include circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, or galvanized, painted), or end finish (plain end, beveled end, threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing,

and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe application. All carbon steel pipes and tubes within the physical description outlined above are included in the scope of this review, except for line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Verification

As provided in sections 782(i)(3) of the Tariff Act of 1930, as amended (the Act), we verified the information provided by Borusan. We used standard verification procedures, including on-site inspection of the respondent producer's facilities and examination of relevant sales and financial records.

Product Comparisons

We compared the EP to the NV, as described in the *Export Price* and *Normal Value* sections of this notice. Because Turkey's economy experienced high inflation during the period of review (POR) (approximately 35 percent), as is Department practice, we limited our comparisons of U.S. sales to comparison-market sales made during the same month in which the U.S. sale occurred and did not apply our "90/60 contemporaneity rule" (*see, e.g.*, Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey, 63 FR 68429, 68430 (December 11, 1998). This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred during the time between the U.S. and the home-market sales. We first attempted to compare products sold in the U.S. and home markets that were identical with respect to the following characteristics: grade, diameter, wall thickness, finish, and end finish. Where there was not an identical comparison, we compared U.S. products with the most similar merchandise sold in the home market based on the characteristics listed above, in that order of priority.

Export Price

Because Borusan sold subject merchandise directly to the first unaffiliated purchaser in the United States prior to importation, and constructed export price methodology was not otherwise warranted based on the record facts of this review, in accordance with section 772(a) of the Act, we used EP as the basis for all of Borusan's sales.

We calculated EP using, as starting price, the packed, delivered price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made the following deductions from the starting price (gross unit price), where appropriate: foreign inland freight from the mill to the port, foreign brokerage and handling, international freight, marine insurance, and other related charges. In addition, we added duty drawback to the starting price.

Normal Value

A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Borusan's volume of home-market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Borusan's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. We calculated NV as noted in the "Price to Price Comparisons" section of this notice.

B. Cost of Production Analysis

Because the Department disregarded sales below the cost of production (COP) in the last completed review of Borusan, we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Borusan in the home market. (*See Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes From Turkey* (*Final Results*), 65 FR 37116 (June 13, 2000)).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of Borusan's costs of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (SG&A) and the cost of all expenses incidental to packing and preparing the foreign like product for shipment.

In order to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that Borusan submit monthly production costs incurred during each month of the POR. We calculated a POR-average cost for each product, then deflated that POR-average for each product back to every month to take into account inflation. To do this, we indexed the reported monthly costs of manufacturing (COM) during the POR to the final month of the POR using the wholesale price index for Turkey from the International Financial Statistics, published by the International Monetary Fund, and calculated a POR-average COM for each product. We then restated the POR-average COM to the inflation level of each month and calculated monthly COP and constructed value (CV) for each product (*see, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not to Revoke in Part*, 68 FR 23972 (September 9, 2003) as explained in *Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke in Part* 68 FR 53127 (May 6, 2003)). To obtain a Borusan Group general and adminstrative (G&A) expense factor, we used the company-wide cost information from the two Borusan Group producers involved in the production of the subject merchandise and the foreign like product. We applied the G&A and interest expense rates to the monthly indexed COM.

2. Test of Comparison Market Sales Prices

We compared the indexed weight-averaged COP figures to home-market sales of the foreign like product as called for by section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to the home-market prices, less any applicable movement charges, rebates, discounts, packing, and direct selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that the below-cost sales were not made in "substantial quantities." To avoid the distortive effects of high inflation, we compared the price for each CONNUM to its COP in the same month. We found that, for certain products, more than 20 percent of Borusan's home market sales were sold at prices below the COP. Further, we did not find that the prices for these sales provided for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Calculation of NV Based on Comparison Market Prices

For those comparison products for which there were sales at prices above the COP, we based NV on home-market prices. In these preliminary results, we were able to match all U.S. sales to contemporaneous sales, made in the ordinary course of trade, of either an identical or a similar foreign like product (based on matching characteristics). We calculated NV based on FOB mill/warehouse or delivered prices to unaffiliated customers, or prices to affiliated customers which were determined to be at arm's length (see discussion below regarding these sales). We made deductions, where appropriate, from the starting price for discounts, rebates, inland freight, and pre-sale warehouse expense. Additionally, we added billing adjustments and interest revenue. In accordance with section 773(a)(6) of the Act, we deducted home-market packing costs and added U.S. packing costs.

In accordance with section 773(a)(6)(C)(iii) of the Act, we adjusted for differences in the circumstances of sale (COS). These circumstances included differences in imputed credit expenses and other direct selling expenses. We also made adjustments, where appropriate, for physical differences in the merchandise (DIFMER) in accordance with section 773(a)(6)(C)(ii) of the Act and for differences in the level of trade (see discussion below regarding level of trade). For the DIFMER adjustment, we calculated POR-average variable and total COMs, by product, after indexing the reported monthly costs using the wholesale price index for Turkey. We then restated the average variable and total COMs to the currency level of each respective month.

Arm's-Length Sales

We included in our analysis Borusan's home-market sales to affiliated customers only where we determined that such sales were made at arm's-length prices, *i.e.*, at prices comparable to prices at which Borusan sold identical merchandise to unrelated customers. To test whether the sales to affiliates were made at arm's-length prices, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts, and packing. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties we determined that the sales made to the affiliated party were at arm's length. *See Modification Concerning Affiliated Party Sales in the Comparison Market*, 67 FR 69186 (November 15, 2002).

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, at 829–831 (see H.R. Doc. No. 316, 103d Cong., 2d Sess. 829–831 (1994)), to the extent practicable, the Department calculates NV based on sales at the same level of trade (LOT) as the U.S. sales (either EP or CEP). When the Department is unable to find sale(s) in the comparison market at the same LOT as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different LOTs. The NV LOT is that of the starting-price sales in the home market. To determine whether home-market sales are at a different LOT than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

In implementing these principles, we examined information from the respondent regarding the marketing stages involved in the reported home-market and EP sales, including a description of the selling activities performed by Borusan for each channel of distribution. Consistent with the prior review of this respondent for the period 1998–1999, we determined that with respect to Borusan's sales, there were two home market LOTs and one U.S. LOT (*i.e.*, the EP LOT). *See Final Results*, 65 FR 37116 (June 13, 2000).

For home-market sales, we found that Borusan's back-to-back sales by affiliated resellers and mill-direct sales comprised one LOT, and Borusan's inventory sales by affiliated resellers warranted a separate LOT. Back-to-back sales by affiliated resellers are sales by Borusan through an affiliated selling agent. Such sales are very similar to mill-direct sales, however the affiliated agent arranges for freight. The affiliated agent does not take possession of the merchandise; it is transferred directly from the mill to the final customer. For mill-direct sales, Borusan provided customer advice, product information and technical services, warranty services, and advertising. For back-to-back sales by affiliated resellers, the resellers engage in marketing activities and make freight arrangements, and warranty services are provided by the mill. For inventory sales by affiliated resellers, the resellers have a sales staff that sells Borusan products out of the reseller's warehouse. Those resellers maintain such warehouses, provide product information, and customer advice. Warranty services for these sales were provided by the mill.

Besides the large difference of warehousing expenses for Borusan's inventory sales by affiliated resellers, with back-to-back and mill-direct sales Borusan transfers the title of the merchandise directly and immediately to the first unaffiliated customer. Borusan also provides discounts for both mill-direct and back-to-back sales, but provides only very limited discounts for inventory sales.

Borusan's U.S. sales were made at only one LOT. The selling functions for U.S. sales included customer advice and product information, warranty services, and freight and delivery arrangements. Borusan's sales to the United States were not made out of warehouses. This LOT is most similar to the first LOT in the home market (mill-direct and back-to-back sales).

Where possible, we compared U.S. sales to sales at the identical home-market LOT—mill-direct sales and back-to-back affiliated reseller sales. If no match was available at the same LOT, we compared sales at the U.S. LOT to sales at the second home-market LOT.

To determine whether a LOT adjustment was warranted, we examined, on a monthly basis, the

prices of comparable product categories, net of all adjustments, between sales at the two home-market LOTs we had designated. We found a pattern of consistent price differences between sales at these LOTs.

In making the LOT adjustment, we calculated the difference in monthly weight-averaged prices between the two home-market LOTs. Where U.S. sales were compared to home-market sales at a different LOT, we adjusted the home-market price by the amount of this calculated difference.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Business Information Services.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. The benchmark rate is defined as the rolling average of the rates for the past 40 business days. When we determine that a fluctuation existed, we generally utilize the benchmark rate instead of the daily rate, in accordance with established practice.

When the rate of domestic price inflation is significant, as it is in this case, it is important that we use as a basis for NV home-market prices that are as contemporaneous as possible with the date of the U.S. sale. This is to minimize the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the time between the U.S. and the home market sales. For this reason, as discussed above, we are comparing home-market and U.S. sales in the same month. For the same reason, we have used the daily exchange rates for currency conversion purposes. *See, e.g., Certain Porcelain on Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 42496, 42503 (August 7, 1997) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 30309 (June 14, 1996).

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period May 1, 2002, through April 30, 2003:

Manufacturer/exporter	Margin (percent)
Borusan Group	1.78

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* section 351.224(b) of the Department's regulations. Interested parties are invited to comment on the preliminary results. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication of this notice. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on a diskette. Any interested party may request a hearing within 30 days of publication of this notice. *See* section 351.310(c) of the Department's regulations. If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any written comments or hearing, within 120 days from publication of this notice.

Assessment

Pursuant to section 351.212(b) of the Department's regulations, the Department calculated an assessment rate for each importer of subject merchandise. Upon completion of this review, the Department will instruct CBP to assess antidumping duties on all entries of subject merchandise by those importers. We have calculated each importer's duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total calculated entered value of examined sales. Where the assessment rate is above *de minimis*, the importer-specific rate will be assessed uniformly on all entries made during the POR.

Cash Deposit Requirements

The following cash deposit rates will be effective upon publication of the final results of this administrative review for all shipments of welded pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the company listed above will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation conducted by the Department, the cash deposit rate will be 14.74 percent, the "All Others" rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 31, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–7806 Filed 4–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils from Taiwan: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limits for the preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limits for the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip ("SSSS") from Taiwan.

EFFECTIVE DATE: April 6, 2004.

FOR FURTHER INFORMATION CONTACT: Peter Mueller, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5811.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2003, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on SSSS from Taiwan. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 68 FR 39511 (July 2, 2003). On July 24, 2003, Chia Far Industrial Factory Co. Ltd. ("Chia Far"), a Taiwanese producer of subject merchandise, requested that the Department conduct an administrative review of its sales of subject merchandise during the period of review. On July 30, 2003, petitioners [1] requested that the Department conduct an administrative review of Chia Far, Yieh United Steel Corporation ("YUSCO"), Tung Mung Development Co., Ltd., Ta Chen Stainless Pipe Co., Ltd., China Steel Corporation, Tang Eng Iron Works, PFP Taiwan Co., Ltd., Yieh Loong Enterprise Co., Ltd., Yieh Trading Corp., Goang Jau Shing Enterprise Co., Ltd., Yieh Mau Corp., Chien Shing Stainless Co., Chain Chon Industrial Co., Ltd., and their various affiliates. On August 22, 2003, the Department published a notice of initiation of a review of SSSS from Taiwan covering the period July 1, 2002 through June 30, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 68 FR 50750 (August 22, 2003). On February 5, 2004, the Department extended the time limit for the preliminary results of this administrative review by 60 days. *See Stainless Steel Sheet and Strip in Coils from Taiwan: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review,* 69 FR 5497 (February 5, 2004). The preliminary results of review are currently due no later than May 31, 2004.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act") states that the administering authority shall make a preliminary determination within 245 days after the last day of the month in which occurs the anniversary of the date of publication of the order, finding, or suspension agreement for which the review under section 751(a)(1) is requested. If it is not practicable to complete the review within the foregoing time, the administering authority may extend that 245-day period to 365 days. Completion of the preliminary results within a 245-day period is impracticable for the following reasons: (1) In order to calculate margins for the preliminary results, the Department must first resolve a complex inquiry as to whether merchandise entering under certain Harmonized Tariff Schedule classifications should be considered subject merchandise; (2) The review involves a large number of transactions and complex adjustments; (3) The responses from Chia Far and YUSCO include sales and cost information which require the Department to gather and analyze a significant amount of information; and (4) The review involves examining complex relationships between the producers and a large number of customers and suppliers.

Therefore, in accordance with section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, we are extending the time period for issuing the preliminary results of review by 60 days from May 31, 2004 until July 30, 2004. The final results continue to be due 120 days after the publication of the preliminary results. This notice is issued and published in accordance with section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations.

Dated: March 31, 2004.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–7807 Filed 4–5–04; 8:45 am]

BILLING CODE 3510–DS–P

[1] Petitioners are Allegheny Ludlum Corporation, AK Steel Corporation, Butler Armco Independent Union, J&L Specialty Steel, Inc., United States Steelworkers of America, AFL–CIO/CLC, and Zanesville Armco Independent Organization.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Stainless Steel Wire Rods From India: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the final results of antidumping duty administrative review.

EFFECTIVE DATE: April 6, 2004.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the review of stainless steel wire rods from India. This review covers the period December 1, 2001 through November 30, 2002.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan, Jonathan Herzog, or Kit Rudd, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0414, (202) 482–4271 and (202) 482–1385 respectively.

Background

On January 22, 2003, the Department published a notice of initiation of an antidumping duty administrative review of stainless steel wire rods ("SSWR") from India covering the period December 1, 2001 through November 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 68 FR 3009 (January 22, 2003). On August 5, 2003, the Department published a notice extending the time limit for the preliminary results by 60 days to December 1, 2003. *See Stainless Steel Wire Rods from India: Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review,* 68 FR 46164 (August 5, 2003). On November 21, 2003, the Department published a notice extending the time limit for the preliminary results by 11 days to

December 12, 2003. *See Stainless Steel Wire Rods from India: Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 65680 (November 21, 2003). On December 19, 2003, the Department published the preliminary determination in this administrative review. *See Stainless Steel Wire Rods from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 70765 (December 19, 2003).

Extension of Time Limit of Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the final results of an antidumping duty review within 120 days of the date on which the preliminary results are published. However, if the Department concludes that it is not practicable to issue the results by the original deadline, it may extend the 120-day period to 180 days. Completion of the final results of this review within the 120-day period is not practicable because information critical to the review has recently been brought to the attention of the Department. As a result, the official record of the review is being reopened so this information can be entered into the record. Additionally, allowance of sufficient time for parties to submit comments and rebuttals on the augmented official record makes issuance of the final results of the review within the 120-day period impracticable.

Therefore, we are extending the time period for issuing the final results of the review by 30 days until May 17, 2004. This notice is issued and published in accordance with section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–7805 Filed 4–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033104D]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat/Marine Protected Area Committee in April, 2004. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Wednesday, April 21, 2004 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will discuss upcoming Omnibus Habitat Amendment organizational issues and presentations on general habitat education issues. They will debate and consider essential fish habitat issues related to Herring Amendment 1 and Multispecies Framework 40.

In addition, they will discuss Marine Protected Area (MPA) policies from around the nation and begin the development a draft MPA policy statement for further discussion and eventual Council consideration. The committee may take up other non-actionable topics as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: March 31, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–763 Filed 4–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032204D]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold meetings of its Pelagics Plan Team (PPT) and its Bottomfish Plan Team (BPT) in Honolulu, HI to discuss fishery issues and develop recommendations for future management.

DATES: The meeting of the PPT will be held on April 27–29, 2004 and BPT meeting on May 4–6, 2004. Both meetings will be held from 8:30 a.m. to 5 p.m. each day.

ADDRESSES: The meetings will be held at the Council Office Conference Room, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813; telephone: 808–522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The PPT will meet on April 27–29, 2004, at the Council Conference Room to discuss the following agenda items:

Tuesday, April 27, 2004, 8:30 a.m.

1. Introduction

2. Annual Report review

a. Review 2002 Annual Report modules and recommendations

b. 2002 Annual Report region-wide recommendations

Wednesday and Thursday, April 28–29, 2004, 8:30 a.m.

3. Format of the Recreational Module and other annual report changes

4. Blue marlin catch-per-unit-effort (CPUE) analysis

5. Localized depletions of pelagic stocks

6. Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) National Standard 1 revisions

7. Planned NOAA-Fisheries longline fishery research in American Samoa

8. Private fish aggregating devices (FADs) in Hawaii

9. Other business

The BPT will meet on May 4–6, 2004, at the Council Conference Room to discuss the following agenda items:

Tuesday, May 4, 2004, 8:30 a.m.

1. Introduction

2. Annual Report review

a. Review 2002 Annual Report modules and recommendations
b. 2002 Annual Report region-wide recommendations

Wednesday, May 5, 2004, 8:30 a.m.

3. Overfishing control rule

a. Report on Dunedin Deep-slope fishery Workshop
b. Status of new control rules
c. Report on Stock Assessment Workshop and review of Recommendations
d. Federal fishery data collection program

4. Archepelagic Ecosystem-based management plan

5. Commonwealth of the Northern Mariana Islands (CNMI) bottomfish fishery management

Thursday, May 6, 2004, 8:30 a.m.

6. Hawaii Bottomfish management

a. National Ocean Service (NOS) Northwestern Hawaiian Islands (NWHI) Sanctuary Designation Process

b. NWHI bottomfish observer coverage
c. Status of State of Hawaii Main Hawaiian Islands (MHI) bottomfish program

7. Essential Fish Habitat and Habitat of Particular Concern

8. Program Planning

a. Council 3–5 year plan
b. Regional Strategic Plan

9. Other Business

The order in which the agenda items are addressed may change. The PPT and BPT will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before the PPT and BPT for discussion, those issues may not be the subject of formal action during these meetings. Plan Team 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.

Dated: March 31, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–762 Filed 4–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033004A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit (EFP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFP to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) proposes to recommend that an EFP be issued in response to an application submitted by Kelo Pinkham in collaboration with Dana Morse (Darling Marine Center). The EFP would allow an exemption from the seasonal GOM Rolling Closure Areas III and IV restrictions. The Assistant Regional Administrator has made a preliminary determination that the application contains all of the required information and warrants further consideration and that the activities to be authorized under the EFP would be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan. However, further review and consultation may be necessary before a final determination is made to issue an EFP.

DATES: Comments must be received on or before April 21, 2004.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Positively Buoyant Ground Cables." Comments may also be sent via fax to (978) 281–9135, or submitted via e-mail to the following address: *da424@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Heather Sagar, Fishery Management Specialist, phone: 978–281–9341, fax: 978–281–9135, e-mail: *heather.sagar@noaa.gov*.

SUPPLEMENTARY INFORMATION: Kelo Pinkham, in collaboration with Dana Morse (Darling Marine Center), submitted a complete EFP application on March 2, 2004. The purpose of this study is to decrease bottom contact of trawl gear and improve the selectivity of groundfish trawls through modifications to increase the buoyancy of the ground cables and the trawl frame. Although the trawl would be modified, the gear would still be compliant with all current regulations. Exemptions would be necessary to relieve vessels from the seasonal GOM Rolling Closure Areas III and IV restrictions in order to provide a greater opportunity to access the appropriate mix of roundfish for effective gear selectivity testing, when compared to open areas.

The proposed study would occur inside the area defined by the following coordinates: 43°40′ N. lat., 69°50′ W. long.; 43°40′ N. lat., 69°30′ W. long.; 43°20′ N. lat., 69°50′ W. long.; and 43°20′ N. lat., 69°30′ W. long. At no time would fishing operations be conducted inside year-round closure areas. There would be one vessel participating in this study for a total of 10 days. The study would occur from May 15, 2004, through June 15, 2004, during which time the vessel would complete 2 days devoted to work with underwater cameras, and 8 days of gear trials. During all 10 days, the vessel would alternate tows with its modified 70–ft (23.3 m) otter trawl net, and its standard New England rigged net. No fish would be landed during the days dedicated to

camera work. The vessel would be required to fish under its days-at-sea throughout the study. The vessel would complete 4 to 6 tows per day, and each tow would last up to 2 hours, for a maximum of 60 tows for this study. Other than the exemption from the Rolling Closure restriction, this study would be conducted in accordance with normal fishing practices. All fish landed would be subject to existing minimum size and trip limit requirements. Darling Marine Laboratory would be responsible for developing a full report of results and would provide this report to NMFS.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–764 Filed 4–5–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

March 31, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: April 6, 2004.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.cbp.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryover, special shift, and the recrediting of unused 2003 carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 65254, published on November 19, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 31, 2004.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 11, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on April 6, 2004, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Levels in Group I	
200	1,640,190 kilograms.
219	18,219,902 square meters.
225	12,758,657 square meters.
300/301	7,331,996 kilograms.
313–O [2]	34,007,290 square meters.
314–O [3]	112,802,509 square meters.
315–O [4]	44,473,885 square meters.
317–O [5]/617/326–O [6]	35,661,309 square meters of which not more than 7,485,760 square meters shall be in Category 326–O.
331pt./631pt. [7]	2,053,935 dozen pairs.
334/335	430,161 dozen.
336/636	1,201,542 dozen.
338/339	2,418,315 dozen.
340/640	2,932,054 dozen.
341	1,797,447 dozen.
342/642	715,200 dozen.
345	876,474 dozen.
347/348	3,276,042 dozen.
351/651	989,569 dozen.
359–C/659–C [8]	2,693,495 kilograms.
359–S/659–S [9]	3,014,055 kilograms.
360	2,432,435 numbers.
361	2,432,435 numbers.
369–S [10]	1,740,405 kilograms.
433	12,565 dozen.
443	93,220 numbers.
445/446	69,961 dozen.
447	19,559 dozen.
448	26,871 dozen.
604–A [11]	1,360,774 kilograms.
611–O [12]	3,488,777 square meters.
613/614/615	48,057,601 square meters.
618–O [13]	6,341,029 square meters.
619/620	17,578,593 square meters.
625/626/627/628/629–O [14]	49,136,300 square meters.
634/635	572,159 dozen.
638/639	2,555,293 dozen.
641	4,285,055 dozen.
643	630,845 numbers.
644	824,392 numbers.
645/646	1,492,112 dozen.
647/648	5,956,332 dozen.
Group II	
201, 218, 220, 224, 226, 227, 237, 239pt. [15], 332, 333, 352, 359–O [16], 362, 363, 369–O [17], 400, 410, 414, 434, 435, 436, 438, 440, 442, 444, 459pt. [18], 469pt. [19], 603, 604–O [20], 624, 633, 652, 659–O [21], 666pt. [22], 845, 846 and 852, as a group	181,962,672 square meters equivalent.
Subgroup in Group II	
400, 410, 414, 434, 435, 436, 438, 440, 442, 444, 459pt. and 469pt., as a group	3,684,947 square meters equivalent.
In Group II subgroup	
435	57,853 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 315–O: all HTS numbers except 5208.52.4055.

[5] Category 317–O: all HTS numbers except 5208.59.2085.

[6] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[7] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[8] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[9] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 369–S: only HTS number 6307.10.2005.

[11] Category 604–A: only HTS number 5509.32.0000.

[12] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[13] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

[14] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

[15] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[16] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545 (Category 359pt.).

[17] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0805, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[18] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[19] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[20] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[21] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[22] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–7753 Filed 4–5–04; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Macau

March 31, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: April 6, 2004.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.cbp.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 55035, published on September 22, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 31, 2004.

Commissioner,
Bureau of Customs and Border Protection,
Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 16, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on April 6, 2004, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
333/334/335	536,735 dozen of which not more than 269,497 dozen shall be in Categories 333/335.
339	2,812,777 dozen.
347/348	1,580,015 dozen.
638/639	3,414,140 dozen.
647/648	1,156,519 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–7754 Filed 4–5–04; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0049, Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to procedures for submitting requests for exemptive, no-action, and interpretative letters.

DATES: Comments must be submitted on or before June 7, 2004.

ADDRESSES: Comments may be mailed to Christopher W. Cummings, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Chrristopher W. Cummings, (202) 418–5445; FAX: (202) 418–5536; e-mail: *ccummings@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters, OMB Control Number 3038–0049—Extension

Commission Rule 140.99 requires persons submitting requests for exemptive, no-action, and interpretative letters to provide specific written information, certified as to completeness and accuracy, and to update that information to reflect material changes. The proposed rule was promulgated pursuant to the Commission's rulemaking authority contained in Section 8a(5) of the Commodity Exchange Act, 7 U.S.C. 12a(5) (1994).

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR 140.99	350	On occasion	455	7.0	3,185
17 CFR 41.41	60	On occasion	24	0.5	12

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of requests for such letters in the last three years. Although the burden varies with the type, size, and complexity of the request submitted, such request may involve analytical work and analysis, as well as the work of drafting the request itself.

Dated: March 30, 2004.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–7672 Filed 4–5–04; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2 p.m., Tuesday, April 13, 2004.

PLACE: 1155 21st St., NW., Washington, DC, Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Commission will hold a closed Judicial Meeting.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100 or *http://www.cftc.gov.*

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–7854 Filed 4–2–04; 10:31 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Mandatory Fire Safety Standards for Candles and Candle Accessories (Petition No. CP 04–1/HP 04–1)

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The United States Consumer Product Safety Commission (Commission or CPSC) has received a petition (CP 04–1/HP 04–1) requesting that the Commission issue mandatory fire safety standards for candles and candle accessories. The Commission solicits written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by June 7, 2004.

ADDRESSES: Comments on the petition, preferably in five copies, should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by facsimile to (301) 504–0127 or by email to *cpsc-os@cpsc.gov*. Comments should be captioned "Petition CP 04–1/HP 04–1, Petition for Fire Safety Standards for Candles and Candle Accessories." A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland. The petition is also available on the CPSC Web site at *www.cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–6833, e-mail *rhammond@cpsc.gov*.

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from the National Association of State Fire Marshals (NASFM) requesting that the Commission issue mandatory fire safety standards for candles and candle accessories including candleholders. Specifically, NASFM requests that the CPSC adopt standards substantially based on the requirements contained in ASTM International Provisional Specifications for Fire Safety for Candles (PS59–02).

In addition, NASFM requests that the standards incorporate:

1. Flammability performance requirements for candle accessories, including candleholders;
2. End of useful life requirements for freestanding, tealight, taper, and votive candles;
3. End of useful life requirements for votive candles and taper candles mounted in appropriate candleholders; and
4. Miscibility and flash point requirements for gel candles.

NASFM asserts that such standards are needed because of the inherent danger posed by candles with their open flames, coupled with the increase in residential fires caused by candles over the past decade. NASFM provided information concerning deaths and injuries involving home candle fires.

The NASFM request that the CPSC adopt a standard substantially based on the requirements contained in ASTM International Provisional Specifications for Fire Safety for Candles (PS59–02), and additional requested items 1., 2., and 3. set forth above, is docketed as petition number CP 04–1 under the Consumer Product Safety Act, 15 U.S.C. 2051–2084. The NASFM request for a standard addressing miscibility and flash point requirements for gel candles is docketed as petition number HP 04–1 under the Federal Hazardous Substances Act, 15 U.S.C. 1261–1278.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. The petition is available on the CPSC Web site at *www.cpsc.gov*. A copy of the petition is also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

Dated: March 30, 2004.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 04–7657 Filed 4–5–04; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 7, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Military Pay Operations Directorate, Defense Finance and Accounting Service, DFAS–PMAC/CL, ATTN: Ms. Gail Halfacre, 1240 East 9th Street, Room 2381, Cleveland, Ohio 44199.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Ms. Gail Halfacre, (216) 204–3624.

Title, Associated Form, and OMB Number: Dependency Statements: Parent (DD Form 137–3), Child Born Out of Wedlock (DD Form 137–4, Incapacitated Child Over Age 21 (DD Form 137–5), Full Time Student 21–22 Years of Age (DD Form 137–6, and Ward of a Court (DD Form 137–7); OMB Number 0730–0014.

Needs and Uses: This information collection is used to certify dependency or obtain information to determine entitlement to basic allowance for housing (BAH) with dependent rate, travel allowance, or Uniformed Services Identification and Privilege Card. Information regarding a parent, a child born out-of-wedlock, an incapacitated child over age 21, a student age 21–22, or a ward of a court is provided by the military member or by another individual who may be a member of the public. Pursuant to 37 U.S.C. 401, 403, 406, and 10 U.S.C. 1072 and 1076, the member must provide more than one half of the claimed child's monthly expenses. DoDFMR 7000.14, Vol. 7A, defines dependency and directs that dependency be proven. Dependency claim examiners use the information from these forms to determine the degree of benefits. The requirement to provide the information decreases the possibility of monetary allowances

being approved on behalf of ineligible dependents.

Affected Public: Individuals or households.

Annual Burden Hours: 24,300 hours.

Number of Respondents: 19,440.

Responses per Respondent: 1.

Average Burden per Response: 1.25 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

When military members apply for benefits, they must complete the form which corresponds to the particular dependent situation (a parent, a child born out-of-wedlock, an incapacitated child over age 21, a student age 21–22, or a ward of a court). While members usually complete these forms, they can also be completed by others considered members of the public. Dependency claim examiners use the information from these forms to determine the degree of benefits. Without this collection of information, proof of an entitlement to a benefit would not exist. The requirement to complete these forms helps alleviate the opportunity for fraud, waste, and abuse of dependent benefits.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 04–7666 Filed 4–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense will submit to OMB for emergency processing, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by April 12, 2004.

Title and OMB Number: Viability of TRICARE Standard Survey; OMB Number 0720– [To Be Determined].

Type of Request: New Collection; Emergency processing requested with a shortened public comment period of five days. An approval date by April 9, 2004, has been requested.

Number of Respondents: 9,360.

Responses Per Respondent: 1.

Annual Responses: 9,360.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 2,340.

Needs and Uses: The Health Program Analysis and Evaluation Directorate (HPAE) under authority of the Office of the Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity will undertake an evaluation of the Department of Defense's TRICARE Standard healthcare option. HPAE will collect and analyze data that are necessary to meet the requirements outlined in Section 723 of the National Defense Authorization Act for Fiscal Year 2004. Activities include the collection and analysis of data obtained from civilian physicians (MD.s & D.O.s) within U.S. TRICARE market areas. Specifically, telephone surveys of civilian providers will be conducted in the TRICARE market areas to determine how many healthcare providers are accepting new patients under TRICARE Standard in each market area. The telephone surveys will be conducted in at least 20 TRICARE market areas in the United States each fiscal year until all market areas in the United States have been surveyed. In prioritizing the order in which these market areas will be surveyed, representatives of TRICARE beneficiaries will be consulted in identifying locations with historical evidence of access-to-care problems under TRICARE Standard. These areas will receive priority in surveying. Information will be collected telephonically to determine the number of healthcare providers that currently accept TRICARE Standard beneficiaries as patients under TRICARE Standard in each market area. Providers will also be asked if they would accept TRICARE Standard beneficiaries as new patients under TRICARE Standard. Analyses and reports will include all legislative requirements.

Affected Public: Individuals or Households.

Frequency: Semi-Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10236, New Executive Office Building, Washington, DC 20503. Written comments and recommendations can be sent directly to the program office to Michael Hartzell, Lieutenant Colonel, USAF, BSC, Health Program Analysis and Evaluation/TMA, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326; or by Fax at (703) 604–1514.

Dated: March 30, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–7667 Filed 4–05–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Corrosion Control will meet in closed sessions on May 24–25, 2004, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will address corrosion control throughout a combat system's life cycle: Design, construction, operation and maintenance.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will assess current on-going corrosion control efforts across the Department of Defense with particular attention to: duplication of research efforts; application of current and future technology which currently exists in one area to other areas (*i.e.*, submarine applications which might translate to aircraft applications); the current state of operator and maintenance personnel training with regards to corrosion control and prevention; the current state of maintenance processes with regards to corrosion control and prevention; the incorporation of corrosion control and maintainability in current acquisition programs (during the design and manufacturing stages); the identity of unique environments important to National Security but with little commercial application (*e.g.*, nuclear weapons). The Task Force will conduct an analysis of the findings generated and determine which areas, if adequate resources were applied, would provide the most significant advances in combat readiness. In addition, the Task Force

will assess best commercial practices and determine their applicability to DoD needs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended 95 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–7664 Filed 4–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Contributions of Space Based Radar to Missile Defense will meet in closed session on April 19, 2004, at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, VA. This Task Force will assess potential contributions of Space Based Radar (SBR) to missile defense.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. This Task Force will: Assess the impact of adding a missile defense mission on the ability of SBR satellites to conduct their primary missions; assess how different SBR architectures and technical approaches might affect the ability of the satellites to achieve their primary missions and to contribute to missile defense; assess the value of potential SBR capabilities in the context of the family of sensors being developed by the Missile Defense Agency; and recommend any future actions that might be desirable related to SBR contributions to missile defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–7665 Filed 4–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the SAB and the ACC Advisory Group. The purpose of the meeting is to allow the SAB leadership to give consensus advice to the ACC Commander. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public

DATES: April 16, 2004.

ADDRESSES: Bldg 205 Dodd Blvd, Langley AFB, VA.

FOR FURTHER INFORMATION CONTACT: Lt Col Mark Nowack, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–7673 Filed 4–5–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Migrant Education Even Start Family Literacy Program; Notice Inviting Applications for New Awards for Fiscal Years (FYs) 2003 and 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.214A

Dates: Applications Available: April 6, 2004.

Deadline for Transmittal of Applications: May 21, 2004.

Deadline for Intergovernmental Review: July 20, 2004.

Eligible Applicants: Any entity is eligible to apply for a grant under the Migrant Education Even Start (MEES) Family Literacy program. For example, the following types of entities are eligible to apply: State educational agencies (SEAs) that administer migrant education programs; local educational agencies (LEAs) that have a high percentage of migratory students; non-profit community-based organizations that work with migratory families; and faith-based organizations.

Estimated Available Funds: $4,500,000. This is the combined estimate from both FY 2003 and FY 2004 funds. We are inviting applications at this time for new awards for both FY 2003 and for FY 2004 to make the most efficient use of competition resources. The Department may use the funding slate resulting from this competition as the basis for future years' awards.

Estimated Range of Awards: $150,000–$500,000 per year.

Estimated Average Size of Awards: $300,000 per year.

Estimated Number of Awards: 12–15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Migrant Education Even Start Family Literacy program grants are intended to help break the cycle of poverty and illiteracy of migratory families by improving the educational opportunities of these families through the integration of early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program. This program is implemented through cooperative activities that: build on high-quality existing community resources to create a new range of educational services for most-in-need migratory families; promote the academic achievement of migratory children and adults; assist migratory children and adults from low-income families to achieve to challenging State content standards and challenging State student performance standards; and use instructional programs based on scientifically based research on preventing and overcoming reading difficulties for children and adults. A description of the required fifteen program elements for which funds must be used under title I, part B, section 1235 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), is included in the application package.

Priority: This notice includes one competitive preference priority and three invitational priorities. These priorities are for the combined FY 2003 and FY 2004 grant competition and any future awards made on the basis of the funding slate from this competition.

Competitive Preference Priority: In accordance with 34 CFR 75.105(b)(2)(ii),

this priority is from section 75.225 of the Education Department General Administrative Regulations (EDGAR) that apply to this program (34 CFR 75.225). This priority is a competitive preference priority. Under 34 CFR 75.105 (c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

Novice Applicant

The applicant must be a "novice applicant." Under 34 CFR 75.225 a novice applicant is an applicant that has never received a grant or subgrant under the MEES program; has never been a participant in a group application, submitted in accordance with sections 75.127–75.129 of EDGAR, that received a grant under the MEES program; and has not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under the MEES program. (34 CFR 75.225.)

Invitational Priorities: These priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Partnerships To Improve School Readiness

The Secretary is especially interested in applications that would create Federal, State, and local partnerships to improve reading proficiency and advance English language acquisition so that migratory children enter elementary school with strong early reading skills.

Invitational Priority 2—Collaboration With Experienced MEES Projects

The Secretary is especially interested in applications that would build networks among novice applicants and experienced MEES projects that will leverage resources to eliminate disruptions in the education of participating families and engage migrant families wherever they move outside the project. Networks among experienced and novice projects increase the likelihood of maintaining the academic progress of migratory adults and children regardless of where migratory families travel to work.

Invitational Priority 3—Agricultural Employer Partnerships

The Secretary is especially interested in applications that would build networks with agricultural employers that will supplement resources available to develop English proficiency for migratory agricultural families with limited English or native-language literacy.

Program Authority: 20 U.S.C. 6381a(a)(1)(A).

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 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $4,500,000. This is the combined estimate from both FY 2003 and FY 2004 funds. We are inviting applications at this time for new awards for both FY 2003 and for FY 2004 to make the most efficient use of competition resources. The Department may use the funding slate resulting from this competition as the basis for future years' awards.

Estimated Range of Awards: $150,000–$500,000 per year.

Estimated Average Size of Awards: $300,000 per year.

Estimated Number of Awards: 12–15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Any entity is eligible to apply for a grant under the MEES Family Literacy program. For example, the following types of entities are eligible to apply: SEAs that administer migrant education programs; LEAs that have a high percentage of migratory students; non-profit community-based organizations that work with migratory families; and faith-based organizations.

2. *Cost Sharing or Matching:* See section 1234(b) of the ESEA. Matching costs requirements for the MEES program begin at 10 percent in the project's first year and increase incrementally as the project continues to receive Federal support. A project funded for a second cycle, years 5 through 8, must maintain a 50 percent cost share. A project funded for cycles beginning in year 9 must maintain a 65 percent cost share.

3. *Other:* Eligible MEES participants consist of migratory children and their parents as defined in 34 CFR 200.81 who also meet the conditions specified in section 1236(a) of the ESEA.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the ED Publication Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/pubs/edpubs.html.* To obtain a copy from ED Pubs, write or call the following: 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 the Federal Information Relay Service (FIRS) at 1–800–877–8339.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.214A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under 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 program.

Page, Appendices, and other Limits: (1) The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. In addition, the budget narrative is where you provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B of Budget Form 524. You are encouraged to limit your application narrative (Part III of the application) to the equivalent of no more than 25 pages and limit the additional budget narrative to the equivalent of no more than four pages. Use the following standards for both the application and budget narratives:

- 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) text in the application and budget narratives, including titles, headings, footnotes, quotations, references, and captions. However, you may single space information in tables, charts, or graphs in the application and budget narratives.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). You may use other point fonts for any tables, charts, and graphs, but those tables charts, and graphs should be in a font size that is easily readable by the reviewers of your application.

• Any application narrative, table, chart, or graph is included in the overall narrative page limit. The budget narrative and Appendices are not part of this page limit.

(2) You are encouraged to limit the appendices to curriculum vitae or position descriptions of no more than five (5) people (including key contract personnel and consultants), and the endnote citations to no more than two (2) pages for the scientifically based reading research upon which your instructional programs are based.

(3) Additionally, please limit other application materials to the specific materials indicated in the application package, and do not include any video or other non-print materials.

3. *Submission Dates and Times:*

Applications Available: April 6, 2004.

Deadline for Transmittal of Applications: May 21, 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 program.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: July 20, 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 program.

5. *Funding Restrictions:* Recipients of a MEES grant may not use funds awarded under this competition for the indirect costs of a project, or claim indirect costs as part of the local project share. (Section 1234(b)(3), ESEA.) We reference regulations outlining additional 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 program.

V. Application Review Information

Selection Criteria: The selection criteria for this program are in 34 CFR 75.210. The selection criteria are included in the application package.

VI. Award Administrative 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:* The Government Performance and Results Act (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. Program officials must develop performance measures for all of their grant programs to assess their performance and effectiveness. The Department has established a set of indicators to assess the effectiveness of the Even Start program, which MEES projects will use to measure increases in the (1) percentages and numbers of adults achieving significant learning gains on measures of literacy and mathematics, and percentages and numbers of limited English proficient (LEP) adults who achieve significant learning gains on measures of English language acquisition; (2) percentages and numbers of Even Start school-age parents who earn a high school diploma, and percentages and numbers of Even Start non-school-age parents who earn a high school diploma or a General Equivalency Diploma (GED); and (3) percentages and numbers of Even Start children entering kindergarten who achieve significant learning gains on measures of language development and reading readiness.

All grantees will be expected to submit, as part of an annual performance report, information documenting their progress with regard to these performance measures.

VII. Agency Contact

For Further Information Contact: DonnaMarie Marlow, U.S. Department of Education, 400 Maryland Avenue SW., room 3E313, Washington, DC 20202–6135. Telephone: (202) 260–2815, or by e-mail: *DonnaMarie.Marlow@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 31, 2004.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 04–7796 Filed 4–5–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; Coal Policy Committee of the National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Coal Policy Committee of the National Coal Council. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, May 6, 2004, at 11 a.m. (CDT) to 1 p.m.

ADDRESSES: Midwest Generation, 440 South LaSalle Street, 36th Floor, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Robert Kane, Phone: 202/586–4753, or Estelle W. Hebron, Phone: 202/586–6837, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Coal Policy Committee of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues. The purpose of this meeting is to review the final draft study on incentives for construction of new coal-based electricity generation.

Tentative Agenda:

- Call to order by Georgia Nelson
- Review of Final Draft Study on Incentives for Construction of New Coal-based Electricity Generation
- Public Comment—10 minute rule
- Adjournment

Public Participation: The meeting is open to the public. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Robert Kane or Estelle W. Hebron at the address or telephone numbers listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Transcripts: The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 31, 2004.

Rachel M. Samuel,

Deputy Committee Management Officer.

[FR Doc. 04–7784 Filed 4–5–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires notice of these meetings to be announced in the **Federal Register.**

DATES: May 27, 2004, 9 a.m. to 12 p.m.

ADDRESSES: Sheraton Station Square Hotel, 300 West Station Square Drive, Pittsburgh, PA.

FOR FURTHER INFORMATION CONTACT: Robert Kane, Phone: 202/586–4753, or Estelle W. Hebron, Phone: 202/586–6837, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda:

Call to Order by Mr. Wes Taylor, Chairman
Council Business
Remarks by Honorable Spencer Abraham, Secretary of Energy
Presentation by Gary Kaster, American Electric Power on Carbon Sequestration
Presentation by DOE/NETL Representative on FutureGen
Presentation by Member of Congress on National Energy Legislation
Presentation by Member of PA Legislature on PA Energy Outlook
Presentation by Carol Raulston, Sr. Vice President, Communications, National Mining Association on Jobs in the Mining Industry
Discussion of Other Business Properly Brought Before the Committee
Public Comment—10 minute rule
Adjournment

Public Participation: The meeting is open to the public. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Robert Kane or Estelle W. Hebron at the address or telephone numbers listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Transcript: The transcript 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, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 31, 2004.

Rachel M. Samuel,

Deputy Committee Management Officer.

[FR Doc. 04–7785 Filed 4–5–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–173–001]

Dominion Transmission, Inc.; Notice of Compliance Filing

March 30, 2004.

Take notice that on March 25, 2004, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 1159, with an effective date of March 1, 2004.

DTI states that the purpose of this filing is to comply with the Commission's Letter Order dated March 19, 2004, which approved the removal of the five-year term matching cap from its right-of-first refusal tariff provisions.

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 § 385.211 of the Commission's Rules and Regulations. All such 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. 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. E4–753 Filed 4–5–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–227–000]

Kern River Gas Transmission Company; Notice of Report of Gas Compressor Fuel and Lost and Unaccounted-For Gas Factors for 2003

March 30, 2004.

Take notice that on March 25, 2004, Kern River Gas Transmission Company (Kern River) tendered a report supporting its gas compressor fuel and lost and unaccounted-for gas factors for 2003.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

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 on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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.

Intervention and Protest Date: April 6, 2004.

Magalie R. Salas,
Secretary.
[FR Doc. E4–754 Filed 4–5–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–39–001]

Kinder Morgan Interstate Gas Transmission LLC; Notice Of Compliance Filing

March 30, 2004.

Take notice that on March 26, 2004, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, the tariff sheets listed in Appendix A to the filing, proposed to be effective date of June 1, 2004.

KMIGT states that the tariff sheets are being filed in compliance with the Commission's "Order Issuing Certificate" dated September 11, 2003 in Docket No. CP03–39–000.

KMIGT states that a copy of this filing has been served upon all parties on the official service list for this proceeding.

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 § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Protest Date: April 15, 2004.

Magalie R. Salas,
Secretary.
[FR Doc. E4–760 Filed 4–5–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–87–000]

Natural Gas Pipeline Company of America; Notice of Application

March 30, 2004.

On March 23, 2004, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed an application in the above-referenced docket, pursuant to Section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations for authorization to acquire and operate a 38.6-mile, 30-inch pipeline segment known as Black Marlin which extends from Bryan County, Oklahoma to Lamar County, Texas, and to construct certain minor tie-in facilities. In addition, Natural requests authorization to lease 60,000 MMBtu per day of short-haul capacity to Northern Natural Gas Company (Northern) in order for Northern to continue providing transportation service for Lamar Power Partners pursuant to Section 311 of the Natural Gas Policy Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to Bruce Newsome, Natural Gas Pipeline Company of America, Vice President, Rates and Regulatory Division, 747 East 22nd Street, Lombard, Illinois 60148 at (630) 691–3526.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18

CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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: April 20, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–747 Filed 4–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–229–000]

Natural Gas Pipeline Company of America; Notice of Tariff Filing

March 30, 2004.

Take notice that on March 26, 2004, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to be effective May 1, 2004:

First Revised Sheet No. 280A;
First Revised Sheet No. 280B; and
First Revised Sheet No. 280C.

Natural states that the purpose of this filing is to revise the General Terms and Conditions in Natural's Tariff relating to shipper creditworthiness. Specifically, the proposed changes would allow Natural to obtain security from noncreditworthy customers on gas loaned under any park and loan service.

Natural states that copies of the filing are being mailed to its customers and interested state commissions.

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. E4–756 Filed 4–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–228–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in Ferc Gas Tariff and Filing of Non-Conforming Service Agreement

March 30, 2004.

Take notice that on March 25, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective April 25, 2004:

Second Revised Sheet No. 371
Second Revised Sheet No. 372

Northwest also tendered for filing a Rate Schedule TF–1 non-conforming service agreement. Northwest states that the purpose of this filing is to submit a Rate Schedule TF–1 service agreement containing contract specific operational flow order provisions that do not conform to the Rate Schedule TF–1 form of service agreement contained inNorthwest's tariff, and to add this agreement to the list of nonconforming service agreements in Northwest's tariff. Northwest also states that the list of non-conforming service agreements in its tariff is further revised to remove two service agreements that will terminate on March 31, 2004.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

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. E4–755 Filed 4–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–231–000]

Northwest Pipeline Corporation; Notice Of Proposed Changes In Ferc Gas Tariff and Filing Of Non-Conforming Service Agreement

March 30, 2004.

Take notice that on March 26, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective April 26, 2004:

Third Revised Sheet No. 372
First Revised Sheet No. 373

Northwest also tendered for filing a Rate Schedule TF–1 non-conforming service agreement.

Northwest states that the purpose of this filing is to submit a Rate Schedule TF–1 service agreement containing provisions that do not conform to the Rate Schedule TF–1 form of service agreement contained in Northwest's tariff, and to add this agreement to the list of non-conforming service agreements in Northwest's tariff.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

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. E4–758 Filed 4–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–230–000]

Panhandle Eastern Pipe Line Company, LLC; Notice Of Proposed Changes In Ferc Gas Tariff

March 30, 2004.

Take notice that on March 26, 2004, Panhandle Eastern Pipe Line Company, LLC (Panhandle) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed in Appendix A attached to the filing to become effective April 26, 2004.

Panhandle states that this filing is being made to modify the transportation and storage service agreements to clarify that shippers and Panhandle may enter into contracts with different levels of Maximum Daily Contract Quantity (MDCQ) or Maximum Stored Quantity (MSQ), as applicable, for specified periods within the contract term.

Panhandle further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

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 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. 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. E4–757 Filed 4–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–232–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 30, 2004.

Take notice that on March 26, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective May 1, 2004:

Fourteenth Revised Sheet No. 250
First Revised Sheet No. 331
Sheet No. 332

Transco states that the purpose of this filing is to set forth in its tariff, in a new Section 22 of the General Terms and Conditions, provisions under which shippers may, at their option and subject to certain conditions, consolidate multiple service agreements under a rate schedule into a single service agreement under that rate schedule.

Transco states that it is proposing these provisions to provide its shippers the opportunity to simplify the administration of multiple service agreements under a rate schedule.

Transco states that copies of the filing are being mailed to parties included on the official service list, interested State Commissions, and other interested parties.

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. E4–759 Filed 4–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG04–45–000, et al.]

Equus Power I, L.P., et al.; Electric Rate and Corporate Filings

March 29, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Equus Power I, L.P.

[Docket No. EG04–45–000]

Take notice that on March 25, 2004, Equus Power I, L.P., (Equus Power) submitted for filing with the Commission an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act and Part 365 of the Commission's Regulations.

Comment Date: April 15, 2004.

2. Split Rock Energy LLC

[Docket No. ER00–1857–003]

Take notice that on March 25, 2004, Split Rock Energy LLC (Split Rock), in compliance with the Commission's June 1, 2000 order in Split Rock Energy LLC, in Docket No. ER00–1857–000, that it was no longer affiliated with ALLETE, Inc. dba Minnesota Power.

Comment Date: April 15, 2004.

3. Public Service Company of New Mexico

[Docket No. ER01–615–003]

Take notice that on March 24, 2004, Public Service Company of New Mexico (PNM) tendered for filing an updated market power study, pursuant to the Commission's order in *Western Resources, Inc. and Public Service Co. of New Mexico,* 94 FERC ¶ 61,050 (2001).

Comment Date: April 14, 2004.

4. California Independent System Operator Corporation

[Docket Nos. ER03–218–005, ER03–219–005, and EC03–81–002]

Take notice that on March 25, 2004, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the Commission's "Order Granting and Denying Rehearing and Conditionally Accepting Compliance Filing and Granting Motion to Withdraw Elements of the Compliance Filing," issued in Docket Nos. ER03–218–004, ER03–219–004 and EC03–81–001 on November 17, 2003, 105 FERC ¶ 61,207.

ISO states that it has served copies of this filing upon all entities that are on the official service list for the dockets.

Comment Date: April 15, 2004.

5. Conjunction, LLC

[Docket No. ER03–452–002]

Take notice that on March 24, 2004, Conjunction LLC (Conjunction), on behalf of Empire Connection LLC submitted a report on the open season that it recently held in February 2004, pursuant to the Commission's order issued May 21, 2003, *Conjunction LLC,* 103 FERC ¶ 61,198 at P17 (2003).

Comment Date: April 14, 2004.

6. Central Maine Power Company

[Docket No. ER03–1307–001]

Please take notice that on March 24, 2004, Central Maine Power Company (CMP) tendered for filing an Executed Interconnection Agreement entered into with Androscoggin Reservoir Company as part of a negotiated settlement. CMP states that service under the Interconnection Agreement will be provided pursuant to CMP's Open Access Transmission Tariff, designated CMP FERC Electric Tariff, Fifth Revised Volume No. 3, First Revised Service Agreement Number 193.

Comment Date: April 14, 2004.

7. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER04–221–002]

Take notice that on March 23, 2004, Deseret Generation & Transmission Co-operative, Inc. (Deseret) submitted a filing detailing a Supplemental 2003 Rebate to each of its six member cooperatives under Service Agreement Nos. 1 through 6 of FERC ElectricTariff, Original Volume No. 1. Deseret requests an effective date of May 12, 2004.

Deseret states that copy of this filing has been provided to each of Deseret's members.

Comment Date: April 13, 2004.

8. PJM Interconnection, L.L.C.

[Docket No. ER04–378–001]

Take notice that on March 25, 2004, PJM Interconnection, L.L.C. (PJM) submitted for filing a substitute construction service agreement among PJM, U.S. General Services Administration, White Oak Federal Research Center, and Potomac Electric Power Company in compliance with the Commission's order dated March 3, 2004 in Docket No. ER04–378–000.

PJM states that copies of this filing were served upon persons designated on the official service list compiled by the Secretary in this proceeding and the parties to the agreements.

Comment Date: April 15, 2004.

9. Tampa Electric Company

[Docket No. ER04–436–000]

Take notice that on March 24, 2004, Tampa Electric Company (Tampa Electric) withdrew the ministerial filing of tariff sheets under its open access transmission tariff (OATT) that it had submitted on January 20, 2004, in compliance with the Commission's Order No. 2003. Tampa Electric states that it will instead make a completely new ministerial filing of conforming tariff sheets under the Commission's Order No. 2003–A.

Tampa Electric states that copies of the filing have been served on the customers under Tampa Electric's OATT and the Florida Public Service Commission.

Comment Date: April 14, 2004.

10. Central Vermont Public Service Corporation

[Docket No. ER04–515–002]

Take notice that on March 23, 2004 Central Vermont Public Service Corporation (Central Vermont) filed an executed version of Second Substitute Original Service Agreement No. 45, a Network Integration Transmission Service Agreement and Network Operating Agreement with the Public Service Company of New Hampshire (PSNH) under Central Vermont's FERC Electric Tariff, Second Revised Volume No. 7 (OATT). Central Vermont requests an effective date of January 1, 2004.

Central Vermont states that copies of the filing were served upon the PSNH and the Vermont Public Service Board.

Comment Date: April 13, 2004.

11. Florida Power & Light Company

[Docket No. ER04–520–002]

Take notice that on March 23, 2004, Florida Power & Light Company (FPL),pursuant to a deficiency letter issued March 4, 2004 in Docket Nos. ER04–520–000 and 001, submitted an amendment to its filings submitted on February 2, 2004 and February 4, 2004 in Docket Nos. ER04–520–000 and 001.

Comment Date: April 14, 2004.

12. Total Gas & Electric, (PA) Inc.

[Docket No. ER04–639–000]

Take notice that on March 24, 2004, Total Gas & Electric, Inc. (Total) withdrew its Notice of Cancellation of its Rate Schedule FERC No. 1, which had previously been filed on March 11, 2004.

Comment Date: April 14, 2004.

13. Total Gas & Electric, Inc.

[Docket No. ER04–640–000]

Take notice that on March 24, 2004, Total Gas & Electric, Inc. (Total) withdrew its Notice of Cancellation of its Rate Schedule FERC No. 1, which had previously been filed on March 11, 2004.

Comment Date: April 14, 2004.

14. Public Service Company of New Mexico

[Docket No. ER04–668–000]

Take notice that on March 24, 2004, Public Service Company of New Mexico (PNM) tendered for filing, pursuant to Section 205 of the Federal Power Act, 16 USC 824d (2000), proposed revisions to its FERC Electric Tariff, First Revised Volume No. 3 (Tariff). PNM states that the proposed tariff revisions: (1) Address the termination of PNM's proposed merger with Western Resources, Inc.; (2) clarify the provision governing sales by PNM to affiliates; (3) remove language requiring service agreements under the Tariff to be filed with the Commission; (4) reflect a change in the bank to which payments for service under the Tariff are to be directed; and (5) include a *Mobile-Sierra* provision in the form of service agreement. In addition, PNM states that it is incorporating into the Tariff the Commission's Market Behavior Rules, as required by the Commission's November 17, 2003 order in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218 (2003).

Comment Date: April 14, 2004.

15. Niagara Mohawk Power Corporation, A National Grid Company

[Docket No. ER04–669–000]

Take notice that on March 24, 2004, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk) tendered for filing an Amendment of Niagara Mohawk's Rate Schedule FERC No. 204. Niagara states that the filing is required to terminate transmission service to the Power Authority of the State of New York (NYPA) for deliveries to the Village of Bergen, New York, as requested by the Village of Bergen with the consent of NYPA. Niagara Mohawk requests an effective date of March 1, 2004.

Niagara Mohawk states that it served copies of this filing upon the customer receiving service under Rate Schedule No. 204, the Power Authority of the State of New York, and its customer, the Village of Bergen, New York, as well as upon the New York Independent System Operator, and the New York Public Service Commission.

Comment Date: April 14, 2004.

16. New England Power Pool

[Docket No. ER04–670–000]

Take notice that on March 24, 2004, the New England Power Pool (NEPOOL) Participants Committee and ISO New England Inc. (the ISO) jointly filed the Objective Capability (OC) values established for the 2004/2005 NEPOOL Power Year. The joint filers state that they submitted this filing as directed by the Commission in Paragraph 23 of the April 30, 2003 order issued in Docket No. EL03–25, New England Power Pool, 103 FERC ¶ 61,093 and Section 205 of the Federal Power Act, 16 U.S.C. 824(d). NEPOOL Participants Committee and the ISO seek a June 1, 2004 effective date for the 2004/2005 Power Year OC Values and request that the Commission expedite its consideration of the filing and issue an order accepting it by or before May 1, 2004.

NEPOOL Participants committee states that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: April 7, 2004.

17. PPL Distributed Generation, LLC

[Docket No. ER04–671–000]

On March 24, 2004, PPL Distributed Generation, LLC (PPL Distributed Generation) submitted for filing an application for authority to sell electric energy, capacity and certain ancillary services at market-based rates and to resell transmission rights and associated ancillary services. PPL Distributed Generation requests an effective date of May 18, 2004.

Comment Date: April 14, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–744 Filed 4–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–81–000, et al.]

Ameren Corporation, et al.; Electric Rate and Corporate Filings

March 30, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Ameren Corporation; Dynegy Inc.; Illinova Corporation; Illinova Generating Company; Illinois Power Company; Dynegy Midwest Generation, Inc.; and Dynegy Power Marketing, Inc.

[Docket Nos. EC04–81–000 and ER04–673–000]

Take notice that on March 25, 2004, Ameren Corporation, Dynegy Inc., Illinova Corporation (Illinova), Illinova Generating Company (Illinova Generating), and Illinois Power Company (Illinois Power) (collectively, FPA 203 Applicants) filed with the Commission a Joint Application for the Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act. As further described in the filing, (1) Illinova proposes to sell, and Ameren proposes to purchase, all of the outstanding common stock and approximately 73 percent of the outstanding preferred stock of Illinois Power, (2) Illinova Generating proposes to sell, and AmerenEnergy Resources Company proposes to purchase, Illinova Generating's 20 percent interest in Electric Energy, Inc., and (3) Illinois Power seeks all Commission authorizations needed to join the Midwest Independent Transmission System Operator, Inc. (collectively, the Proposed Transactions). The FPA 203 Applicants request that the Commission find that the Proposed Transactions are consistent with the public interest and approve the Proposed Transactions pursuant to Section 203 of the Federal Power Act, 16 USC 824b (2000), by no later than July 28, 2004.

Further, Dynegy Midwest Generation, Inc. (DMGI) and Dynegy Power Marketing, Inc. (DYPM) (collectively, FPA 205 Applicants) filed a request that the Commission accept for filing, under Section 205 of the Federal Power Act, (1) two power purchase agreements under which DYPM will sell capacity and energy to Illinois Power at negotiated rates, (2) an Interim PPA Rider that amends an existing power purchase agreement between Illinois Power and DMGI; and (3) an agreement under which DMGI will provide Illinois Power with black start service at negotiated rates. The Section 205 Applicants request that the Commission accept these agreements for filing, by no later than July 28, 2004.

Comment Date: May 10, 2004.

2. Southern California Edison Company

[Docket No. ER04–316–002]

Take notice that on March 26, 2004, Southern California Edison Company (SCE), on behalf of its affiliate Mountainview Power Company, LLC (MVL), submitted a revised Power Purchase Agreement between SCE and MVL in compliance with the Commission's order issued February 25, 2004 in Docket No. ER04–316–000, 106 FERC ¶ 61,183 (2004).

Comment Date: April 16, 2004.

3. PJM Interconnection, L.L.C.

[Docket No. ER04–474–001]

Take notice that on March 26, 2004, PJM Interconnection (PJM) submitted an amendment to its January 23, 2004 filing of an unexecuted interconnection service agreement among PJM, Industrial Power Generating Corporation, and Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, all doing business as Allegheny Power, in compliance with the deficiency letter issued February 25, 2004 in Docket No. ER04–474–00. PJM states that the amendment includes a substitute ISA to include language regarding release of confidential information to the Commission or its staff. PJM requests waiver of the Commission's notice requirements to allow a January 23, 2004 effective date for the amended ISA.

PJM states that copies of this filing were served upon the official service list and the parties to the agreement.

Comment Date: April 16, 2004.

4. PPL Electric Utilities Corporation

[Docket No. ER04–612–001]

Take notice that on March 25, 2004, PPL Electric Utilities Corporation (PPL Electric) filed a Coordination Agreement between PPL Electric and the Borough of Ephrata, Pennsylvania.

PPL Electric states that it has served a copy of this filing on the Borough of Ephrata.

Comment Date: April 15, 2004.

5. PPL Electric Utilities Corporation

[Docket No. ER04–613–001]

Take notice that on March 25, 2004, PPL Electric Utilities Corporation (PPL Electric) filed a Coordination Agreement between PPL Electric and the Borough of Perkasie, Pennsylvania.

PPL Electric states that it has served a copy of this filing on the Borough of Perkasie.

Comment Date: April 15, 2004.

6. PPL Electric Utilities Corporation

[Docket No. ER04–634–001]

Take notice that on March 25, 2004, PPL Electric Utilities Corporation (PPL Electric) filed Coordination Agreements between PPL Electric and the following Pennsylvania Boroughs: Borough of Blakely, Borough of Catawissa, Borough of Duncannon, Borough of Hatfield, Borough of Lansdale, Borough of Lehighton, Borough of Mifflinburg, Borough of Olyphant, Borough of Quakertown, Borough of St. Clair, Borough of Schuylkill Haven, Borough of Watsontown and Borough of Weatherly (the Boroughs).

PPL Electric states that it has served a copy of this filing on each of the Boroughs.

Comment Date: April 15, 2004.

7. Split Rock Energy LLC

[Docket No. ER04–672–000]

Take notice that on March 25, 2004, Split Rock Energy LLC (Split Rock) tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, to reflect cancellation of FERC Electric Rate Schedule No. 4.

Comment Date: April 15, 2004.

8. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER04–674–000]

Take notice that on March 26, 2004, Wolverine Power Supply Cooperative, Inc., (Wolverine) tendered for filing a Notice of Termination of Service Agreement No. 5 under Wolverine's FERC Electric Tariff, First Revised Vol. No. 1. Wolverine states that the parties agreed that the Facilities Agreement would be supplanted by Wolverine's Second Revised Rate Schedule FERC No. 4 upon approval, and the Commission recently approved Wolverine's revised rate effective January 1, 2004. Wolverine requested waiver to permit a cancellation effective date of January 1, 2004, to coincide with the effective date of Wolverine's revised rate schedule.

Wolverine states that a copy of this filing has been served upon Great Lakes Energy Cooperative.

Comment Date: April 16, 2004.

9. Ameren Services Company

[Docket No. ER04–675–000]

Take notice that on March 26, 2004, Ameren Services Company (ASC) tendered for filing an executed Network Integration Transmission Service and Network Operating Agreement between ASC and MidAmerican Energy Company. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to MidAmerican Energy Company, pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: April 16, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–765 Filed 4–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

March 30, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 620–009.

c. *Date filed:* October 3, 2003.

d. *Applicant:* NorQuest Seafoods Inc.

e. *Name of Project:* Chignik Hydroelectric Project.

f. *Location:* The Chignik Project is located on Indian Creek in Lake and Peninsula Borough, Alaska. The project affects approximately 58 acres of federal lands managed by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ron Soule, NorQuest Seafoods Inc., 5245 Shilshole Ave NW., Seattle, WA 98107–4833 or via telephone at (206) 281–7022, or via e-mail at: *rsoule@norquest.com.*

i. *FERC Contact:* Kenneth Hogan at (202) 502–8434 or *kenneth.hogan@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing Chignik Hydroelectric Project operates continuously at 2.7 cubic-feet-per-second (cfs), and serves as the domestic water supply for the City of Chignik. The project consists of the following features: (1) a timber crib dam, spill way and overflow channel; (2) a 20.4 surface acre reservoir; (3) a 7,700 foot-long wood stave and steel pipeline; (4) a turbine and 60 kW generator; and (5) other appurtenant facilities.

NorQuest estimates that the average annual generation is 219.000 kilowatt hours (kWh). NorQuest uses the Chignik Hydroelectric Project facilities to augment the consumption of diesel fuel in their diesel generators used to supply electricity to NorQuest's cannery operations.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E4–748 Filed 4–5–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2003–0017; FRL–7640–5]

Agency Information Collection Activities; Submission to OMB Review and Approval; Comment Request; Hazardous Waste Specific Unit Requirements and Special Waste Processes and Types (Renewal), EPA ICR Number 1572.06, OMB Control Number 2050–0050

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on March 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may by submitted on or before May 6, 2004.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2003–0017, to (1) EPA online using EDOCKET (our preferred method), by email to *rcra-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Resource Conservation and Recovery Act (RCRA) Docket, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Norma Abdul-Malik, Office of Solid Waste, Mail Code 5303W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8753; fax number: (703) 308–8638; email address: *Abdul-Malik.Norma@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 20, 2003 (68 FR 50131), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. RCRA–2003–0017, which is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. 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 and OMB with 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to www.epa.gov/edocket.

Title: Hazardous Waste Specific Unit Requirements and Special Waste Processes and Types (Renewal).

Abstract: This ICR covers the specific information collection and record keeping requirements set out in 40 CFR parts 261, 264, 265, and 266 for various hazardous waste treatment, storage, and disposal units. The units and processes covered are: tank systems; surface impoundments; waste piles; land treatment; landfills; incinerators; thermal treatment; chemical, physical, and biological treatment; miscellaneous units; drip pads; process vents; equipment leaks; containment buildings; and specific hazardous waste recovery/recycling facilities. The information and record keeping is necessary to comply with the statutory requirements to develop standards for hazardous waste treatment, storage, and disposal facilities to protect human health and the environment. The information is used by regulatory agencies to ensure compliance with the standards.

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 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average the following burden hours per response.

	Reporting	Recordkeeping
Subpart I: Containers	0	89–95
Subpart J: Tank Systems	3	74–77
Subpart K: Surface Impoundments	0–5	73–74
Subpart L: Waste Piles	19	19
Subpart M: Land Treatment	0	0
Subpart N: Landfills	0–3	37–38
Subpart O: Incinerators	0–1	3
Subpart W: Drip Pads	0	34
Subpart X: Miscellaneous Units	0	0
Subpart AA: Process Vents	0–10	403–435
Subpart BB: Equipment Leaks	1–6	45–46
Subpart DD: Containment Buildings	1–3	27–28

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop,

acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of hazardous waste management facilities.

Estimated Number of Respondents: 8,170.

Frequency of Responses: once every three years.

Estimated Total Annual Hour Burden: 669,476.

Estimated Total of Annual Cost: $44,237,000, includes $0 annual capital/startup costs, $4,329,000 annual O&M costs and $39,908,000 annual labor costs.

Changes in the Estimates: There is an increase of 382,407 hours in the total estimated burden currently identified in the OMB inventory of Approved ICR Burdens. This increase is due to more accurate data.

Dated: March 29, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–7778 Filed 4–5–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7643–4]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or email at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1673.04; Reporting and Recordkeeping Requirements for Importation of Nonconforming Nonroad Compression Ignition (CI) and Small Spark Ignition (SI) Engines; in 40 CFR part 89, subpart G; was approved 2/19/2004; OMB Number 2060–0294; expires 02/28/2007.

EPA ICR No. 1066.04; NSPS for Ammonium Sulfate Manufacture; in 40 CFR part 40, subpart PP); was approved 02/20/2004; OMB Number 2060–0032; expires 02/28/2007.

EPA ICR No. 1160.07; NSPS for Wool Fiberglass Insulation Manufacturing Plants; in 40 CFR part 60, subpart PPP and NESHAP for Wool Fiberglass Manufacturing Plants; in 40 CFR part 63, subpart NNN; was approved 02/20/2004; OMB Number 2060–0114; expires 02/28/2007.

EPA ICR No. 0877.08; Environmental Radiation Ambient Monitoring System (ERAMS); was approved 2/19/2004; OMB Number 2060–0015; expires 02/28/2007.

EPA ICR No. 1064.10; NSPS for Automobile and Light Duty Truck Surface Coating Operations; in 40 CFR part 60, subpart MM; was approved 02/19/2004; OMB Number 2060–0034; expires 02/28/2007.

EPA ICR No. 1157.07; NSPS for Flexible Vinyl and Urethane Coating and Printing; in 40 CFR part 60, subpart FFF; was approved 02/19/2004; OMB Number 2060–0073; expires 02/28/2007.

EPA ICR No. 1718.04; Recordkeeping and Reporting Requirements for the Fuel Quality Regulations for Diesel Fuel Sold in 2001 and Later Years (Final Rule); in 40 CFR part 80, was approved 02/05/2004; OMB Number 2060–0308; expires 09/30/2004.

EPA ICR No. 0658.08; NSPS for Pressure Sensitive Tape and Label Surface Coating; in 40 CFR part 60, subpart RR; was approved 02/05/2004; OMB Number 2060–0004; expires 02/28/2007.

EPA ICR No. 2060.02; Cooling Water Intake Structures Phase II Existing Facility (Final Rule); in 40 CFR 122.21(d)(2), 122.21(r)(2,3,5), 122.21(r)(2)(i–iii), 122.21(r)(3)(i–v), 122.21(r)(5)(i–ii), and 40 CFR 125.94–125.98; was approved 02/17/2004; OMB Number 2040–0257; expires 02/28/2007.

EPA ICR No. 1765.03; Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings; in 40 CFR part 59, subpart B; was approved 03/03/2004; OMB Number 2060–0353; expires 03/31/2007.

EPA ICR No. 1715.05; TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead Based Paint Activities (Final Notification); was approved 03/09/2004; OMB Number 2070–0155; expires 08/31/2004.

Short Term Extensions

EPA ICR No. 1250.06; Request for Contractor Access to TSCA Confidential Business Information; OMB Number 2070–0075; on 02/24/2004; OMB extended the expiration date to 05/31/2004.

EPA ICR No. 1427.06; National Pollutant Discharge Elimination System (NPDES) Compliance Assessment/Certification Information; OMB Number 2040–0110; on 02/26/2004 OMB extended the expiration date to 5/31/2004.

Dated: March 24, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–7779 Filed 4–5–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7643–7]

Approval of West Virginia Water Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the approval, under section 303 of the Clean Water Act, of West Virginia's decision not to adopt a water quality criterion for 3-methyl-4-chlorophenol. The Clean Water Act requires each state to adopt water quality standards to protect public health and welfare, enhance the quality of water and otherwise serve the purposes of the CWA. 33 U.S.C. 1313(a)–(c). New or revised water quality standards adopted by a state must be submitted to EPA for review and approval. 33 U.S.C. 1313(c)(2)(A).

FOR FURTHER INFORMATION CONTACT: For questions about this approval, please contact Cheryl Atkinson at (215) 814–3392 or mail your questions to: Cheryl Atkinson, U.S. EPA Reg. III (3WP11), 1650 Arch St., Philadelphia, PA 19103.

SUPPLEMENTARY INFORMATION: In July 1998, West Virginia removed from its Requirements Governing Water Quality

Standards, the criteria for phenolic materials, which applied to, among others, the pollutant 3-methyl-4-chlorophenol. In June 22, 1999, EPA disapproved the removal of the phenolic material criteria. Recently West Virginia adopted several phenolic material criteria; however, West Virginia did not adopt a criterion for 3-methyl-4-chlorophenol. On April 17, 2003, EPA approved the newly adopted phenolic material criteria despite the lack of a 3-methyl-4-chlorophenol criterion because EPA's national recommended criterion for 3-methyl-4-chlorophenol is based on organoleptic effects (taste and odors) that have no demonstrated relationship to adverse human health effects.

On January 14, 2004, the Eastern District of Pennsylvania district court issued a mostly favorable opinion in a litigation challenging the 2003 EPA approval of several West Virginia WQSs. *See West Virginia Rivers Coalition* v. *Environmental Protection Agency,* No. 03–1022 (E.D. PA. Jan. 14, 2004). However, the court found EPA's approval of the State's decision not to adopt a criterion for 3-methyl-4-chlorophenol, arbitrary and capricious. The court remanded to EPA for review the omission of the 3-methyl-4-chlorophenol criterion. The court also ordered EPA to document its review in the **Federal Register**.

In accordance with the court's order, this notice announces EPA's decision on March 15, 2004, to approve West Virginia's decision not to adopt a criterion for 3-methyl-4-chlorophenol Appendix A to this notice discusses the rationale supporting the decision to approve.

Dated: March 30, 2004.

Jon M. Capacasa,

Director of the Water Protection Division, Region III.

Appendix A—Environmental Protection Agency Approval Rationale for 3-methyl-4-chlorophenol, West Virginia Requirements Governing Water Quality Standards, March 15, 2004.

Document Summary: The following discussion provides a description and uses of 3-methyl-4-chlorophenol; analysis of the effects, exposure, and risks associated with 3-methyl-4-chlorophenol; information on its likely prevalence in West Virginia; and a conclusion of whether 3-methyl-4-chlorophenol could be "reasonably expected" to interfere with designated uses related to taste and odor and human heath in West Virginia. Based on this information and analysis, EPA concludes that 3-methyl-4-chlorophenol cannot reasonably be expected to interfere with those designated uses in West Virginia. Therefore, a numeric criteria value for 3-methyl-4-chlorophenol is not required in West Virginia's WQS.

I. Description and Uses of 3-Methyl-4-Chlorophenol

3-methyl-4-chlorophenol (CAS number: 59–50–7) is a priority toxic pollutant under section 307(a) of the CWA. As noted in EPA's Substance Registry Service CAS file for this chemical (available at: *http://www.epa.gov/srs/*), there are a number of synonyms for this chemical, including: parachlorometacresol (or p-chloro-m-cresol), 3-methyl-4-chlorophenol, or 4-chloro-3-methylphenol.

3-methyl-4-chlorophenol was first registered as a pesticide in 1968 for use as an industrial preservative in the U.S.[1] As of 1997, it has been registered for three products, including two manufacturing-use products and one end-use product, all of which are industrial uses only. Specifically, the chemical is used as a microbicide to control slime-forming bacteria and fungi that might develop in industrial products; these products are currently used in the manufacturing of industrial adhesives, industrial coatings, emulsions, leather processing liquors, metal cutting fluids, paints (in can), specialty industrial products, oil drilling muds/packer fluids, and wet-end adhesives/industrial processing chemicals. The chemical is also used in paper coatings and adhesives for food products, and as a preservative in pharmaceutical products and cutting oils (Ref. 4). The detection limit for 3-methyl-4-chlorophenol is 3.0 ug/L (ppb) using EPA Method 625 (40 CFR part 136, Table 5).

II. Human Health Effects, Exposure, and Risks Associated with 3-Methyl-4-Chlorophenol

EPA conducted a review of available information related to human health effects associated with exposure to 3-methyl-4-chlorophenol. This review includes searches of a number of databases providing information on human health effects associated with exposure to chemicals, and reviews of drinking water regulations. EPA also estimated human health risk screening values for evaluating human exposure to 3-methyl-4-chlorophenol in water and fish, applying peer-reviewed EPA guidance to derive this estimate.

(A) Taste and odor problems to humans in water and caught fish: EPA has published a national recommended water quality criteria value for 3-methyl-4-chlorophenol of 3,000 ug/L for organoleptic effects to address undesirable taste and odor in water potentially consumed by humans. EPA reported in the "Gold Book" (*Quality Criteria for Water: 1986*) that at a concentration of 3,000 ug/l in water, 3-methyl-4-chlorophenol causes a discernable odor. Where concentrations of 3-methyl-4 chlorophenol are below 3,000 ug/l, public water supplies are not affected by an undesirable odor or taste. EPA's recommended water quality criteria value of 3,000 ug/L for organoleptic effects in ambient water is also a reasonable screening value for taste and odor effects in caught fish because 3-methyl-4-chlorophenol is not highly bioaccumulative and would therefore not be expected to be present in fish tissues at concentrations that are much greater than those in water (EPA 2000; 2003).

(B) Human health effects: 3-methyl-4-chlorophenol is toxic when there is human exposure to skin and eyes at concentrations ranging between 200–50,000 mg/L. It can cause redness and pain when exposed to eyes and skin, and it can cause other health symptoms when ingested or inhaled. However, this chemical rapidly dissipates when exposed to air, and biodegrades readily in water under aerobic conditions. Studies on carcinogenicity and mutagenicity effects have been negative (Ref. 3).

For this evaluation, EPA estimated health risk screening values for evaluating protection against non-cancer effects associated with long-term human exposure to 3-methyl-4-chlorophenol in water and fish. The health risk screening values are: 5,200 ug/l ("water + organism") and 27,000 ug/L ("organism only"). The "water and organism" value is to protect human health based on exposure to the pollutant via consumption of water and fish, while the "organism only" value is to be protective based on exposure via the consumption of fish.

The health risk screening values were calculated as described in EPA's *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000)* (Ref 11 & 12). To account for the human exposure to the pollutant through the consumption of fish and other aquatic food, we calculated trophic level-specific bioaccumulation factors for trophic levels 2,3, and 4 aquatic organisms.[2] The bioaccumulation factors (BAFs) were estimated from the octanol-water partition coefficient (K_{ow}), based on procedures and methods provided in EPA guidance (EPA 2000; 2003). Using the log K_{ow} reported for 3-methyl-4-chlorophenol in the 1997 EPA RED (where log K_{ow}=3.02), we first determined the baseline BAF to be 1047 L/kg-tissue (baseline BAF ~ K_{ow} = antilog of 3.02 = 1047). We did not use food chain multipliers in calculating BAFs, because for chemicals with a log K_{ow} < 4.0, the chemical is classified as having low hydrophobicity and food chain accumulation is not considered to be an important factor in the calculation of BAFs (EPA 2000; 2003). Due to the lack of data on the metabolization rate of this chemical in fish, we used the conservative assumption that the chemical is metabolized slowly, although generally phenolic compounds do readily metabolize in fish tissue. In accordance with EPA guidance, trophic level-specific baseline

[1] EPA's Office of Pesticide Programs (OPP)'s Reregistration Eligibility Decisions (REDs) documents contain the results of EPA's regulatory reviews of pesticides initially registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The REDs database is found at: *http://www.epa.gov/pesticides/reregistration/*. The REDs fact sheet for this chemical is available at: *http://www.epa.gov/REDs/factsheets/3046fact.pdf* (EPA–738–F–96–008, January 1997) and in the REDs full document for this chemical (EPA–738–R–96–008, January 1997) found at: *http://www.epa.gov/REDs/3046red.pdf*.

[2] Trophic levels in the aquatic food chain go from algae to zooplankton and benthic filter feeders to forage fish to predatory fish.

BAFs are adjusted to conditions that are expected to affect the bioavailability of 3-methyl-4-chlorophenol (*i.e.*, National BAFs derived). We adjusted the National BAFs to reflect percent lipid of the aquatic organisms consumed by humans (trophic level-specific) and the freely dissolved fraction of chemical in ambient waters. Using national default values for lipid content of consumed aquatic organisms and for particulate and dissolved organic carbon (to estimate the freely dissolved fraction of the chemical in water), the following national BAF values were calculated for 3-methyl-4-chlorophenol: trophic level 2 = 20.9L/kg-tissue; trophic level 3 = 28.2 L/kg-tissue; trophic level 4 = 32.4 L/kg-tissue. These national trophic level-specific BAFs are used in conjunction with national default trophic level fish ingestion rates (TL2 = 0.0038 kg/d, TL3 = 0.0080 kg/d, TL4 = 0.0057 kg/d) to calculate the ingestion of chemical that is due to consumption of fish (EPA 2000; 2003). In the case of this evaluation for 3-methyl-4-chlorophenol, the result was 0.4905 L/d.

For the next step in estimating the risk screening value, we used the non-cancer effect equation from the human health methodology. The reference dose (RfD) of 0.9 mg/kg/d was derived from the lowest observed effects level (LOEL = 28 mg/kg/d) data from a rat study presented in the EPA RED document and the EPA recommended uncertainty factors.[3] We used the default "floor" relative source contribution (RSC) of 20% in this evaluation (EPA, 2000), because of lack of information available on potential exposures to 3-methyl-4-chlorophenol and hence for performing a quantitative RSC analysis. Using these input parameters, the health screening values for "water and organism" (5,200 ug/L) and "organism only" (27,000 ug/L) were estimated for comparison to the significantly lower organoleptic criteria (3,000 ug/L) and the effluent discharge monitoring data.

III. Prevalence of 3-Methyl-4-Chlorophenol in West Virginia Surface Waters

EPA searched for information or data relevant to the discharge or presence of 3-methyl-4-chlorophenol throughout the State of West Virginia. The results of this search indicate that 3-methyl-4-chlorophenol (p-chloro-m-cresol) is not likely to be present at levels above the analytical detection limit in any effluent or ambient surface water in West Virginia.

Under the technology-based effluent guidelines limitations, 3-methyl-4-chlorophenol (p-chloro-m-cresol) is regulated only as a member of a group of organic chemicals ("priority pollutants") in 40 CFR parts 423 (Steam Electric Power Generating Point Source Category), 433 (Metal Finishing Point Source Category), 464 (Metal Molding and Casting Point Source Category), and 467 (Aluminum Forming Point Source Category). This organic chemical is not regulated as an individual parameter in EPA's effluent guidelines because data available at the time the effluent guidelines were developed indicated that this organic chemical was not detected at an elevated concentration in treated effluent being discharged by such facilities.

EPA conducted a review of permit information for dischargers associated with the numerous Standard Industrial Category (SIC) codes associated with the above effluent guidelines regulations, and for permit information on all parameter codes associated with 3-methyl-4-chlorophenol in EPA's Permit Compliance System (PCS) data base. The permit review described above indicated that all major permitted facilities required to analyze for the presence of 3-methyl-4-chlorophenol reported no detections above the detection limit for this chemical (or other synonym names associated with this chemical).

In addition, EPA searched several monitoring data bases and contacted authorities who conduct either surface water ambient monitoring or drinking water monitoring and found that these authorities do not monitor for this chemical (or other synonym names associated with this chemical). There are no fish advisories currently in effect for 3-methyl-4-chlorophenol in West Virginia.

Another private database (Ref. 7) online provided the following data regarding the presence of this chemical in the environment (although not specifically in West Virginia). Chlorinated municipal sewage effluents in the United Kingdom have been observed to contain 3-methyl-4-chlorophenol concentrations of approximately 2 ppb (ug/L).

In the final effluent and soil leachate from a treatment works in the United Kingdom, 3-methyl-4-chlorophenol concentrations of 73 ng/L (0.073 ug/L) and 154 ng/L (0.154 ug/L), respectively, were reported. In summary, detections were reported in some effluent discharges in England at levels at or below 2 ug/l. The data base notes that environmental release of 3-methyl-4-chlorophenol may occur through inadvertent formation in waters (potable water, wastewater, cooling water) which have undergone chlorination treatment and by evaporation or waste releases from product formulation or end-products containing 3-methyl-4-chlorophenol. However, also according to the database, if the chemical is released to water, photolysis and biodegradation appear to be capable of degrading this chemical. Various screening tests have demonstrated that this chemical is readily biodegradable under aerobic conditions. If released to the atmosphere, 3-methyl-4-chlorophenol will degrade rapidly (half-life of 1.1 days).

IV. Is 3-Methyl-4-Chlorophenol "Reasonably Expected" To Interfere With Human Health Designated Uses in West Virginia?

As described further below, based on this information and analysis, EPA concludes that 4-chloro-3-methylphenol cannot reasonably be expected to interfere with designated uses related to taste and odor and human heath in West Virginia. Therefore, a numeric criteria value for 3-methyl-4-chlorophenol is not required in West Virginia's WQS.

Section 303(c)(2)(B) of the CWA requires adoption of numeric criteria for priority toxic pollutants where the discharge or presence of priority toxics may interfere with designated uses. Where the discharge or presence of priority toxics cannot "reasonably be expected" to interfere with designated uses, a numeric criterion is not required.

EPA's WQS regulation, at 40 CFR 131.11(a)(2), provides requirements for adoption of priority toxic pollutants in WQS, and notes that: "States must review water quality data and information on discharges to identify specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern and must adopt criteria for [toxic pollutants including 3-methyl-4-chlorophenol] applicable to the water body sufficient to protect the designated use."

As discussed in section II above (II. Effects, Exposure, and Risks Associated with 3-methyl-4-chlorophenol), an appropriate action level to control undesirable taste and odor problems associated with human exposure to 3-methyl-4-chlorophenol is 3,000 µg/L. Appropriate screening levels to protect against non-cancer effects associated with human exposure to 3-methyl-4-chlorophenol in water and fish are: 5,200 µg/l ("water + organism" exposure) and 27,000 µg/L ("organism only" exposure). Carcinogenicity and mutagenicity studies were negative for effects.

EPA reviewed, assembled and documented available information or data relevant to the discharge or presence of 3-methyl-4-chlorophenol throughout the State. As discussed in section III above (Prevalence of 3-methyl-4-chlorophenol in West Virginia surface waters), 3-methyl-4-chlorophenol (p-chloro-m-cresol) is not indicated to be present at detectible levels in effluent or ambient surface water monitoring data throughout the State.

Since 4-chloro-3-methylphenol is not indicated to be present in effluent or ambient surface water monitoring data throughout West Virginia, the chemical has not been shown to be present in surface waters at levels above action levels that would be protective of human health (*i.e.*, 3,000 µ/L, to protect from undesirable taste and odor problems; 5,250 µ/L, to protect against non-cancer effects associated with "water + organism" exposure; and 26,600 µ/L, to protect against non-cancer effects associated with "organism only" exposure).

The lack of detection in effluent and surface waters is consistent with our knowledge of the uses of this compound. If releases to surface waters occur from industrial practices, the concentration of this chemical would be further diluted and degraded by photolysis and biodegradation.

EPA therefore concludes that, based on this information and analysis, 3-methyl-4-chlorophenol cannot reasonably be expected to interfere with designated uses related to taste and odor and human heath in West Virginia. Therefore, a numeric criteria value for 3-methyl-4-chlorophenol is not required in West Virginia's WQS. The narrative criteria in the West Virginia regulations

[3] In applying the uncertainty factors, the LOEL is divided by a factor of 3 to account for the lack of NOEL—no observed effects level-in the chronic rat study and further is divided the result by 10 to account for the limited number of species tested)(EPA RED 1997; EPA 2000).

concerning toxics, and pollutants affecting taste and odor, in sewage and effluent still apply.[4] This decision is consistent with other Agency's decisions involving organoleptic pollutants. In December 1992, EPA promulgated numeric criteria for priority toxic pollutants for fourteen states at 40 CFR part 131 (57 FR 60848). The CWA requires that states adopt water quality standards for toxic pollutants. EPA excluded from this rulemaking criteria that are based on taste and odor effects, not on toxic effects. EPA noted that the purpose of the rulemaking was to protect public health and aquatic life from toxicity, and organoleptic pollutants are not toxic (57 FR 60864). Similarly, in May 2000, EPA promulgated numeric criteria for priority toxic pollutants for California, also at 40 CFR part 131. This rulemaking also excluded criteria for organoleptic pollutants because they are not based on toxicity to humans or aquatic life (65 FR 31698).

References

1. EPA's Substance Registry Service CAS file (*http://oaspub.epa.gov/srs/srs_proc_qry.navigate?P_SUB_ID=3103*).

2. Office of Pollution, Pesticides and Toxics (OPPT)'s Reregistration Eligibility Decisions (REDs) database (*http://www.epa.gov/pesticides/reregistration/*).

3. The REDs fact sheet for this chemical (*http://www.epa.gov/REDs/factsheets/3046fact.pdf*) (EPA–738–F–96–008, January 1997) and the REDs full document for this chemical (EPA–738–R–96–008, January 1997) is available at: *http://www.epa.gov/REDs/3046red.pdf*.

4. National Institute for Occupational Safety and Health (NIOSH) "RTECs" (*http://www.cdc.gov/niosh/rtecs/go6c5660.html#Y*) and NIOSH's Chemical Data Safety Card for this chemical (*http://www.cdc.gov/niosh/ipcsneng/neng0131.html*).

5. EPA Method 625 (40 CFR part 136, Table 5).

6. EPA's Permit Compliance System (PCS) data base, found at: *http://www.epa.gov/compliance/planning/data/water/pcssys.html*, using searches on the following Web site: *http://www.epa.gov/enviro/html/pcs/pcs_query_java.html*.

7. Spectrum Laboratories maintains a database at: (*http://www.speclab.com/compound/c59507.htm*).

8. West Virginia Fish advisory Web site (*http://www.wvdhhr.org/fish/current.asp*) searched on February 19, 2004.

9. EPA "Gold Book" (*Quality Criteria for Water: 1986, EPA 440/5–86–001*).

10. EPA's *Ambient Water Quality Criteria for Chlorinated Phenols* (EPA, 1980, EPA 405–80–032).

11. *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000)*, EPA–822–B–00–004, October 2000.

12. *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000)-Technical Support Document Vol. 2 Development of National Bioaccumulation Factors*, EPA–822–R–03–030, December 2003.

[4] West Virginia Requirements Governing Water Quality Standards sections 46–1–3.2.d–3.2.e.

[FR Doc. 04–7780 Filed 4–5–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

March 11, 2004.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 6, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0771.

Title: Section 5.61, Procedure for Obtaining a Special Temporary Authorization in the Experimental Radio Service.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for profit entities; State, Local or Tribal Government.

Number of Respondents: 500.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 500 hours.

Total Annual Cost: N/A.

Needs and Uses: The FCC may issue a special temporary authority (STA) under Part 5 of the rules in cases where a need is shown for operation of an authorized station for a limited time only, in a manner other than that specified in the existing authorization, but does not conflict with the Commission's rules. A request for STA may be filed as an informal application.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–7800 Filed 4–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

March 23, 2004.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

(b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 6, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0849.

Title: Commercial Availability of Navigation Devices, CS Docket No. 97–80.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 215.

Estimated Time per Response: 10 mins. to 40 hrs.

Frequency of Response: Quarterly and semi-annual reporting requirements; Third Party Disclosure.

Total Annual Burden: 3,384 hours.

Total Annual Costs: $33,450.

Privacy Impact Assessment: Does not apply.

Needs and Uses: On April 25, 2003 the FCC released an Order and Further Notice of Proposed Rulemaking ("Order and FNPRM"), *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices,* CS Docket No. 97–80, FCC 03–89. In this Order and FNPRM the Commission extends by eighteen months the existing 2005 deadline in § 76.1204(a)(1) prohibiting the deployment of integrated navigation devices by multichannel video programming distributors in order to promote the retail sale of non-integrated host devices. This extension was granted in light of ongoing negotiations between the cable and consumer electronics industries that may affect the technical specifications relating to host devices and associated point-of-deployment modules. The Commission also committed to completing a reassessment of the upcoming ban on integrated devices, based in part upon the status of these negotiations, prior to January 1, 2005. In order to complete its assessment in a timely manner, the FCC has requested that the cable and consumer electronics industries file progress reports with the Commission on the status of their negotiations at 90, 180, and 270 day intervals following release of the Order and FNPRM. The proposed progress reports would be used as a partial basis to elicit public comment as a part of a rulemaking proceeding pursuant to the Order and FNPRM on the appropriateness of the new July 1, 2006 ban on integrated devices, based upon the status of these negotiations. This objective is commensurate with our statutory directive in Section 629 of the Communications Act of 1934, as amended, to act "in consultation with appropriate industry standard-setting organizations" to assure the commercial availability of navigation devices used in conjunction with services provided by multichannel video programming distributors ("MVPDs").

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–7802 Filed 4–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

March 23, 2004.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 6, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0948.

Title: Noncommercial Educational Applicants.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 630.

Estimated Time per Response: 0.25–2.0 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 534.

Total Annual Cost: $92,250.

Privacy Impact Assessment: Does not apply.

Needs and Uses: On April 4, 2000, the Commission adopted a Report and Order in MM Docket No. 95–31, FCC 00–120, *In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants.* This Report and Order adopted procedures to select among competing applicants for noncommercial educational (NCE)

broadcast channels, including a point system to select among mutually exclusive applicants on reserved channels and filing windows for new and major changes to NCE stations. 47 CFR 73.202 provides that entities eligible to operate an NCE broadcast station can request that a non-reserved FM channel be allotted as reserved only for NCE broadcasting. This request must include a demonstration as specified in (a)(1)(i) and (ii) of this rule section. 47 CFR 73.3527 requires that documentation of any points claimed in an application for a NCE broadcast station in the reserved band must be kept in the public inspection file. 47 CFR 73.3572 requires an applicant for a NCE broadcast station on a reserved channel to submit supporting documentation of the points claimed on the application form. The FCC staff use this documentation to determine whether there is a greater need for a noncommercial channel versus a commercial channel and to perform random audits of the application point certifications. This supporting documentation also enables competing applicants to verify and/or dispute other applicants' claims.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–7803 Filed 4–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; 60 Day Notice of Intent To Request Emergency Reinstatement of Collection of Information; Opportunity for Public Comment

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of intent to request from the Office of Management and Budget ("OMB") emergency reinstatement for six months of a previously approved collection of information and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") is soliciting comments on the need for the collection of information contained in 12 CFR Part 1102, Subpart A, Temporary Waiver Requests. The ASC also requests comments on the practical utility of the collection of information; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

DATES: Comments on this information collection must be received on or before June 7, 2004.

ADDRESSES: Send comments to Ben Henson, Executive Director, Appraisal Subcommittee, 2000 K Street, NW., Suite 310, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, Appraisal Subcommittee, at 2000 K Street, NW., Suite 310, Washington, DC 20006 or 202–293–6250.

SUPPLEMENTARY INFORMATION:

Title: 12 CFR part 1102, subpart A; Temporary Waiver Requests.

ASC Form Number: None.

OMB Number: 3139–0003

Expiration Date: October 2004 (specific date to be determined at time of OMB emergency approval).

Type of Request: Emergency reinstatement.

Description of Need: The information sets out detailed procedures governing temporary waiver proceedings under § 1119(b) of the Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(b)).

Automated Data Collection: None.

Description of Respondents: State, local or tribal government; individuals or households; and business and other for-profit institutions.

Estimated Average Number of Respondents: 1 respondent.

Estimated Average Number of Responses: Once.

Estimated Average Burden Hours Per Response: 10 hours for each proceeding.

Estimated Annual Reporting Burden: 10 hours.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: March 31, 2004.

Ben Henson,

Executive Director.

[FR Doc. 04–7668 Filed 4–5–04; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; 60 Day Notice of Intent To Request Emergency Reinstatement of Collection of Information; Opportunity for Public Comment

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of intent to request from the Office of Management and Budget ("OMB") emergency reinstatement for six months of a previously approved collection of information and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") is soliciting comments on the need for the collection of information contained in 12 CFR Part 1102, Subpart D, Description of Office, Procedures, Public Information. The ASC also requests comments on the practical utility of the collection of information; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

DATES: Comments on this information collection must be received on or before June 7, 2004.

ADDRESSES: Send comments to Ben Henson, Executive Director, Appraisal Subcommittee, 2000 K Street, NW., Suite 310, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, Appraisal Subcommittee, at 2000 K Street, NW., Suite 310, Washington, DC 20006 or 202–293–6250.

SUPPLEMENTARY INFORMATION:

Title: 12 CFR Part 1102, Subpart D; Description of Office, Procedures, Public Information.

ASC Form Number: None.

OMB Number: 3139–0006.

Expiration Date: October 2004 (specific date to be determined at time of OMB emergency approval).

Type of Request: Emergency reinstatement.

Description of Need: The information sets out detailed procedures implementing the Freedom of Information Act, as amended. 12 U.S.C. 552.

Automated Data Collection: None.

Description of Respondents: State, local or tribal government; individuals or households, business or other for-profit institutions; not-for-profit institutions; farms; and Federal government.

Estimated Average Number of Respondents: 11 respondents.

Estimated Average Number of Responses: Once per respondent.

Estimated Average Burden Hours Per Response: .5 hours.

Estimated Annual Reporting Burden: 5.5 hours.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: March 31, 2004.

Ben Henson,

Executive Director.

[FR Doc. 04–7669 Filed 4–5–04; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; 60 Day Notice of Intent To Request Emergency Reinstatement of Collection of Information; Opportunity for Public Comment

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of intent to request from the Office of Management and Budget ("OMB") emergency reinstatement for six months of a previously approved collection of information and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") is soliciting comments on the need for the collection of information contained in 12 CFR Part 1102, Subpart C, Rules Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Appraisal Subcommittee. The ASC also requests comments on the practical utility of the collection of information; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

DATES: Comments on this information collection must be received on or before June 7, 2004.

ADDRESSES: Send comments to Ben Henson, Executive Director, Appraisal Subcommittee, 2000 K Street, NW., Suite 310, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, Appraisal Subcommittee, at 2000 K Street, NW., Suite 310, Washington, DC 20006 or 202–293–6250.

SUPPLEMENTARY INFORMATION:

Title: 12 CFR part 1102, subpart C; Rules Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Appraisal Subcommittee.

ASC Form Number: None.

OMB Number: 3139–0005.

Expiration Date: October 2004 (specific date to be determined at time of OMB emergency approval).

Type of Request: Emergency reinstatement.

Description of Need: The information sets out detailed procedures implementing the Privacy Act of 1974, as amended. 12 U.S.C. 552a.

Automated Data Collection: None.

Description of Respondents: State, local or tribal government; individuals or households; not-for-profit institutions; farms; business or other for-profit; and Federal government.

Estimated Average Number of Respondents: 4 respondents.

Estimated Average Number of Responses: Once per respondent.

Estimated Average Burden Hours Per Response: 4.25 hours.

Estimated Annual Reporting Burden: 17 hours.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: March 31, 2004.

Ben Henson,

Executive Director.

[FR Doc. 04–7670 Filed 4–5–04; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 98–14]

Shipping Restrictions, Requirements and Practices of the People's Republic of China

AGENCY: Federal Maritime Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Maritime Commission is seeking comments from the shipping public on the current status of shipping in the U.S. trade with the People's Republic of China ("PRC") and the effects of the U.S.-China bilateral Maritime Agreement signed on December 8, 2003. Specifically, the Commission seeks information on whether anticipated improvements in the ability of non-Chinese ocean carriers and non-vessel-operating common carriers to conduct operations in the U.S. trade with China have occurred. Interested parties, including shippers, ocean transportation intermediaries, vessel operators and others in the shipping industry, are invited to comment.

DATES: Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 10, Microsoft Word 2000, or earlier versions of these applications, no later than June 1, 2004. Requests for meetings to make oral presentations to individual Commissioners must be received, and the meetings completed, by this date as well.

ADDRESSES: Send comments to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5725, *secretary@fmc.gov*.

FOR FURTHER INFORMATION CONTACT: Amy W. Larson, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5740, *generalcounsel@fmc.gov*.

SUPPLEMENTARY INFORMATION: This proceeding to investigate potentially restrictive practices in the U.S./China trade was initiated by the Federal Maritime Commission ("Commission" or "FMC") on August 12, 1998, with the issuance of Information Demand Orders on U.S. and Chinese carriers and a Notice of Inquiry to the shipping public generally.[1] *Shipping Restrictions, Requirements and Practices of the People's Republic of China,* 63 FR 44259 (August 18, 1998). The information collected was supplemented through Further Information Demand Orders issued on December 2, 1999, and February 8, 2000, to Maersk/Sea-Land and China Shipping Container Lines ("CSCL"), and Notices of Inquiry issued on March 12 and June 28, 2002. 67 FR 11695 (March 15, 2002); 67 FR 4483 (July 4, 2002).

Among the potentially restrictive practices addressed in the Commission's orders were:

[1] Those orders were directed to Sea-Land, American President Lines, China Ocean Shipping (Group) Company ("COSCO") and China National Foreign Trade and Transportation Co. ("Sinotrans").

• The prohibition of branch offices on non-Chinese vessel operators in locations other than port cities at which they or their carrier partners have regular vessel calls, and the resulting inability to issue through bills of lading for carriage originating in or destined for inland points in China to directly serve inland customers;

• Limitation of vessel agency operations to Chinese state-owned entities, thus requiring non-Chinese liner operators to employ vessel agent subsidiaries of their Chinese competitors; and

• Possible adverse effects of the Chinese Regulation on International Maritime Transport ("RIMT") and final rules implementing the RIMT issued December 25, 2002, particularly on the ability of non-vessel-operating common carriers ("NVOCCs") to do business in China.

The diplomatic negotiations that continued while the Commission considered the issues in this proceeding have resulted in the signing of a bilateral Maritime Agreement ("Agreement") and Memorandum of Consultations signed by U.S. Secretary of Transportation Norman Y. Mineta and PRC Minister of Communications Zhang Chunxian on December 8, 2003. That Agreement, characterized by Secretary Mineta as one of the most far-reaching agreements in the history of U.S.-China maritime relations, appears to provide potentially significant relief from the restrictive practices raised before the Commission in this proceeding.

With respect to the geographic restrictions on vessel operating carriers' branch Offices, Parts I and II of the Annex to the Agreement provide:

> Shipping companies of each Party, as well as their subsidiaries, affiliates and joint ventures, have the right to establish and maintain *any number of branch offices* in the territory of the other party * * * *without geographic limitation* * * * (emphasis added).

With respect to "doing business" restrictions on non-Chinese carriers, the list of the types of services that may be provided by non-Chinese common carriers' branch (or head) offices in China contained in Parts I and II of the Annex to the Agreement appears to be comprehensive of the functions necessary to conduct intermodal as well as port to port international ocean shipping services. These include the ability to:

• Solicit and book cargo;

• Prepare, authenticate, process and issue bills of lading, *including through bills of lading* that are generally accepted in international maritime transport (emphasis added);

• Assess, collect and remit freight and other charges arising out of their service contracts or tariffs;

• Negotiate and enter into service contracts;

• Contract for truck and rail transport, cargo handling and other ancillary services;

• Quote and publish tariffs;

• Conduct sales and marketing activities;

• Establish office facilities;

• Import and own vehicles and other equipment necessary to their operation;

• Employ local and foreign employees; and

• Conduct multimodal or combined transport activities using commercially customary bills of lading or combined transport documents.

Part II of the Annex to the Agreement also provides that vessel operators may: "*Perform vessel agency services,* including customs clearance and inspection, for vessels owned, chartered, or operated by shipping companies" (emphasis added). Finally, with respect to the NVOCC "bonding" requirements of the RIMT, the Memorandum of Consultations states that:

> The Chinese delegation * * * noted its Government's intentions not to require U.S. NVOCCs to make a cash deposit in a Chinese bank, as a prerequisite to apply to the Chinese Ministry of Communications (MOC) to engage in [NVOCC] services between U.S. and Chinese ports, provided that the NVOCC:
>
> 1. Is a legal person registered by U.S. authorities;
>
> 2. Obtains an FMC license evidencing NVOCC eligibility; and
>
> 3. Provides evidence of financial responsibility in the total amount of 800,000 RMB or $96,000 U.S. (certificate of bond as proof of credit.)

Subsequent to the Agreement's signing, the Commission received separate letters from Maritime Administrator Captain William G. Schubert and Under Secretary of State for Economic, Business, and Agricultural Affairs Alan Larson, describing the Agreement and the process by which the Agreement would enter into force. The Agreement will not enter into force until both parties, *i.e.*, the Government of China and the U.S. Government, take the additional actions outlined in the Memorandum of Consultations. Letter of Captain William G. Schubert to Chairman Steven R. Blust, December 31, 2003 ("Schubert letter"). Completion of these actions will enable the two governments to exchange diplomatic notes confirming that all agreed upon steps have been completed and that they are satisfied that the Agreement should enter into force.

Actions on the part of the U.S. Government include the Maritime Administrator's commitments to advise the FMC of the significant improvements in the bilateral relationship formalized in the Agreement, share that communication with U.S. shippers and carriers, and encourage a similar positive reaction on their part to the FMC, and action by the U.S. Government to grant relief from certain provisions of the Controlled Carrier Act to Chinese carriers that have pending requests for relief before the FMC.[2] The actions on the part of the Chinese Government necessary to "harmonize its relevant measure with the Agreement's terms" include making changes to licenses of U.S. shipping companies and container transport service companies to permit them to exercise the rights enumerated in Parts I and II of the Annex to the Agreement.

The letters from the Maritime Administrator and the Under Secretary of State expressed their support for the Chinese carriers' Petitions then pending before the Commission, and encouraged the filing of similar expressions of support by U.S. shippers and carriers. The Commission enabled such parties to convey their views by publication of the Notices providing for an additional comment period in the proceedings on the Petitions. P3–99, *Petition of China Ocean Shipping (Group) Company for a Partial Exemption from the Controlled Carrier Act, 69* FR 4158–4159 (January 28, 2004); P4–03, *Petition of China Shipping Container Lines Co., Ltd. for Permanent Full Exemption from The First Sentence of Section 9(c) of The Shipping Act of 1984,* 69 FR 4159–4160 (January 28, 2004); and P6–03, *Petition of Sinotrans Container Lines Co., Ltd. (Sinolines) for a Full Exemption from the First Sentence of Section 9(c) the Shipping Act of 1984, as Amended,* 69 FR 4160–4161 (January 28, 2004). The comment period closed on February 23, 2004. The Commission received numerous comments in support of those Petitions, and none in opposition. The Commission has acted today to grant those Petitions in separate proceedings. Commission action on the Petitions would appear to complete the U.S. Government actions described in the Memorandum of Consultations as necessary to precede the exchange of diplomatic notes that will bring the Agreement into force.

[2] Only the FMC can act administratively to exampt carriers from the requirements of that law.

The Agreement and the Memorandum of Consultations contain commitments for actions by the Chinese Government that, if implemented, appear likely to resolve all of the major concerns raised in this proceeding. As the Maritime Administrator notes, "China has agreed to significant market opening measures under this Agreement." He further suggests that "dramatic improvement in business operations * * * will come about for U.S. carriers as a result." Schubert letter at 2.

In addition, in order to make it possible to give effect to the provision of the Memorandum of Consultations relating to the furnishing by U.S. NVOCCs of proof of an FMC license and proof of financial responsibility in addition to that required by the FMC, as an alternative to the deposit of cash in a Chinese bank required under the RIMT, the Commission today has amended its rules on proof of financial responsibility. The rules now make it possible for an NVOCC that wishes to participate in the U.S. trade with China to file with the Commission an optional proof of financial responsibility, in the form of a bond rider, to supplement the evidence of financial responsibility required to secure its FMC license. This optional rider would appear to meet the Chinese requirements as provided for in the Memorandum of Consultations.

We are encouraged by these developments and anticipate that the conditions affecting non-Chinese ocean common carriers that led us to initiate this proceeding will either be substantially ameliorated or no longer exist. Moreover, it appears likely at this time that the Commission's rule permitting the filing of the additional bond rider by NVOCCs will provide a satisfactory resolution to that issue.

Nevertheless, we believe that additional information is required in order to determine whether the commitments made by the Chinese are being acted upon and therefore whether discontinuance of this proceeding is appropriate. For example, we believe it will be difficult to ascertain whether NVOCC concerns previously expressed in this proceeding will be adequately addressed until the optional rider authorized today can be made available by the issuers of bonds for U.S. NVOCCs and filed with the Commission and some NVOCCs have successfully obtained licenses to operate in China on the basis of such riders.

Therefore, the Commission is providing an opportunity for the filing of further information, with an extended period for receipt of comments, in this proceeding so that it will be able to verify that U.S. NVOCCs have been able to secure licenses to operate as NVOCCs in China without making the substantial deposit in a Chinese bank required under the RIMT, and that carrier licenses have been modified as necessary to fully carry out their operations. The Commission encourages companies participating in the U.S. trade with China who are affected by the Agreement to submit comments and, if relevant, supporting documentation. Comments may be submitted at any time during the comment period. Commenters also may wish to file supplemental comments to update information initially submitted. Such comments will assist the Commission in measuring the effects of the Agreement.

Pursuant to Rule 53(a) of the Commission's Rules of Practice and Procedure, 46 CFR 502.53(a), in notice-and-comment rulemakings the Commission may permit interested persons to make oral presentations in addition to filing written comments. The Commission has determined to permit interested persons to make such presentations to individual Commissioners in this proceeding, at the discretion of each Commissioner. Any meeting or meetings shall be completed before the close of the comment period. The summary or transcript of oral presentations will be included in the record and must be submitted to the Secretary of the Commission within five days of the meeting. Interested persons wishing to make an oral presentation should contact the Office of the Secretary to secure contact names and numbers for individual Commissioners.

Upon request, the Commission may hold information submitted in response to this Notice of Inquiry confidential, pursuant to 46 U.S.C. app. 876(h) and 46 U.S.C. app. 1710a(d)(3). The Commission cannot, however, ensure the confidentiality of documents submitted via e-mail due to the nature of such transmissions.

Now therefore, it is ordered, that this Notice of Inquiry be published in the **Federal Register**.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–7783 Filed 4–5–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 21, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Franzen Limited Partnership, Itasca, Illinois; General Partner Glenn E. Mensching, Jr., Frankfort, Michigan, as trustee of the Glenn E. Mensching Jr., Trust; General Partner Jack E. Mensching, Itasca, Illinois, as trustee of the Jack E. Mensching Trust; and General Partner James R. Mensching, Itasca, Illinois, as trustee of the James R. Mensching Trust, Itasca, Illinois, to retain outstanding voting shares of Itasca Bancorp, Inc., Itasca, Illinois, and thereby indirectly acquire Itasca Bank &Trust Co., Itasca, Illinois.

Board of Governors of the Federal Reserve System, April 1, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–7809 Filed 4–5–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 30, 2004.

A. Federal Reserve Bank of Cleveland (Nadine W. Wallman, Assistant Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Citizens Bancshares, Inc., Bluffton, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares if The Citizens National Bank, Bluffton, Ohio.

Board of Governors of the Federal Reserve System, March 31, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–7688 Filed 4–5–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 4, 2004.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Lakeland Bancorporation, Inc., Lakeville, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Lakeland Bank, Lakeville, Minnesota, a *de novo* bank.

Board of Governors of the Federal Reserve System, April 1, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–7810 Filed 4–5–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Children's Online Privacy Protection Safe Harbor Proposed Self-Regulatory Guidelines; Privo, Inc. Application

AGENCY: Federal Trade Commission.

ACTION: Notice announcing submission of proposed "safe harbor" guidelines and requesting public comment.

SUMMARY: The Federal Trade Commission publishes this notice and request for public comment concerning proposed self-regulatory guidelines submitted by Privo, Inc. ("Privo") under the safe harbor provision of the Children's Online Privacy Protection Rule, 16 CFR 312.10.

DATES: Comments must be received by May 7, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Privo Safe Harbor Proposal, Project No. P044506" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H (Annex F), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The Commission is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent, as prescribed in the **SUPPLEMENTARY INFORMATION** section, to the following e-mail box: *privosafeharbor@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov/privacy/safeharbor/shp.htm*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Rona Kelner, (202) 326–2752, or Elizabeth Delaney, (202) 326–2903, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 601 New Jersey Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

On October 20, 1999, the Commission issued its final Rule [1] pursuant to the Children's Online Privacy Protection Act, 15 U.S.C. 6501, *et seq.* The Rule requires certain website operators to post privacy policies, provide notice, and obtain parental consent prior to collecting, using or disseminating personal information from children. The Rule contains a "safe harbor" provision

[1] 64 FR 59888 (1999).

enabling industry groups or others to submit to the Commission for approval self-regulatory guidelines that would implement the Rule's protections.[2]

Pursuant to § 312.10 of the Rule, Privo has submitted proposed self-regulatory guidelines to the Commission for approval. The full text of the proposed guidelines is available on the Commission's Web site, *www.ftc.gov/privacy/safeharbor/shp.htm.*

Section B. Questions on the Proposed Guidelines

The Commission is seeking comment on various aspects of the proposed guidelines, and is particularly interested in receiving comment on the questions that follow. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted. Responses to these questions should cite the numbers and subsection of the questions being answered. For all comments submitted, please provide any relevant data, statistics, or any other evidence, upon which those comments are based.

1. Please provide comment on any or all of the provisions in the proposed guidelines. For each provision commented on please describe (a) the impact of the provision(s) (including any benefits and costs), if any, and (b) what alternatives, if any, Privo should consider, as well as the costs and benefits of those alternatives.

2. Do the provisions of the proposed guidelines governing operators' information practices provide "the same or greater protections for children" as those contained in §§ 312.2–312.8 of the Rule? [3] Where possible, please cite the relevant sections of both the Rule and the proposed guidelines.

3. Are the mechanisms used to assess operators' compliance with the guidelines effective? [4] If not, please describe (a) how the proposed guidelines could be modified to satisfy the Rule's requirements, and (b) the costs and benefits of those modifications.

4. Are the incentives for operators' compliance with the guidelines effective? [5] If not, please describe (a) how the proposed guidelines could be modified to satisfy the Rule's requirements, and (b) the costs and benefits of those modifications.

5. Do the guidelines provide adequate means for resolving consumer complaints? If not, please describe (a) how the proposed guidelines could be modified to resolve consumer complaints adequately, and (b) the costs and benefits of those modifications.

Section C. Invitation To Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the proposed self-regulatory guidelines. The Commission invites written comments to assist it in ascertaining the facts necessary to reach a determination as to whether to approve the proposed guidelines. Written comments must be submitted on or before Mary 7, 2004. Comments should refer to "Privo Safe Harbor Proposal, Project No. P044506" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H (Annex F, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential." [6] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington Area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following email box: *privosafeharbor@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov/privacy/safeharbor/shp.htm.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–7788 Filed 4–5–04; 8:45 am]

BILLING CODE 6750–01–M

[2] *See* 16 CFR 312.10; 64 FR at 59906–59908, 59915.

[3] *See* 16 CFR 312.10(b)(1); 64 FR at 59915.

[4] *See* 16 CFR 312.10(b)(2); 64 FR at 59915.

[5] *See* 16 CFR 312.10(b)(3); 64 FR at 59915.

[6] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanies by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Computer Matching Program (Match No. 2003–02)

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of Computer Matching Program (CMP).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, this notice announces the establishment of a CMP that CMS plans to conduct with the Texas Health and Human Services Commission (HHSC). We have provided background information about the proposed matching program in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed matching program, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section below for comment period.

EFFECTIVE DATES: CMS filed a report of the CMP with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 23, 2004. We will not disclose any information under a matching agreement until 40 days after filing a report to OMB and Congress or 30 days after publication. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Privacy Compliance Data Development (DPCDD), Enterprise Databases Group, Office of Information Services, CMS,

Mail stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Lourdes Grindal Miller, Health Insurance Specialist, Centers for Medicare & Medicaid Services, Office of Financial Management, Program Integrity Group, Mail-stop C3–02–16, 7500 Security Boulevard, Baltimore Maryland 21244–1850. The telephone number is (410) 786–1022 and e-mail is *lgrindalmiller@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Description of the Matching Program

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 100–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;

2. Obtain the Data Integrity Board approval of the match agreements;

3. Furnish detailed reports about matching programs to Congress and OMB;

4. Notify applicants and beneficiaries that the records are subject to matching; and,

5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all CMPs that this Agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: March 23, 2004.

Dennis Smith,

Acting Administrator, Centers for Medicare & Medicaid Services.

Computer Match No. 2003–02

NAME:

"Computer Matching Agreement Between the Centers for Medicare & Medicaid Services (CMS) and the State of Texas Health and Human Services Commission (HHSC) for Disclosure of Medicare and Medicaid Information."

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive

PARTICIPATING AGENCIES:

The Centers for Medicare & Medicaid Services, and State of Texas Health and Human Services Commission

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

This CMA is executed to comply with the Privacy Act of 1974 (Title 5 United States Code (U.S.C.) 552a), (as amended by Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act (CMPPA) of 1988), the Office of Management and Budget (OMB) Circular A–130, titled "Management of Federal Information Resources" at 65 **Federal Register** (FR) 77677 (December 12, 2000), and OMB guidelines pertaining to computer matching at 54 FR 25818 (June 19, 1989).

This Agreement provides for information matching fully consistent with the authority of the Secretary of the Department of Health and Human Services (Secretary). Section 1816 of the Social Security Act (the Act) permits the Secretary to contract with fiscal intermediaries to "make such audits of the records of providers as may be necessary to insure that proper payments are made under this part," and to "perform such other functions as are necessary to carry out this subsection" (42 U.S.C. 1395h (a)).

Section 1842 of the Act provides that the Secretary may contract with entities known as carriers to "make such audits of the records of providers of services as may be necessary to assure that proper payments are made" (42 U.S.C. 1395u(a)(1)(C)); "assist in the application of safeguards against unnecessary utilization of services furnished by providers of services and other persons to individuals entitled to benefits" (42 U.S.C. 1395u(a)(2)(B)); and "to otherwise assist * * * in discharging administrative duties necessary to carry out the purposes of this part" (42 U.S.C. 1395u(a)(4)).

Furthermore, section 1874(b) of the Act authorizes the Secretary to contract with any person, agency, or institution to secure on a reimbursable basis such special data, actuarial information, and other information as may be necessary in the carrying out of his functions under this title (42 U.S.C. 1395kk(b)).

Section 1893 of the Act establishes the Medicare Integrity Program, under which the Secretary may contract with eligible entities to conduct a variety of program safeguard activities, including fraud review employing equipment and software technologies that surpass the existing capabilities of Fiscal Intermediaries and carriers (42 U.S.C. 1395ddd)). The contracting entities are called Program Safeguards Contractors (PSC).

HHSC is charged with the administration of the Medicaid program in Texas and is the single state agency for such purpose (Texas Government Code (TGC) 531.021). HHSC may act as an agent or representative of the Federal government for any purpose in furtherance of HHSC's functions or administration of the Federal funds granted to the state (TGC 531.021). In Texas, HHSC provides qualifying individuals with health care and related remedial or preventive services, including both Medicaid services and services authorized under state law that are not provided under Federal law. The program to provide all such services is known as the Texas Medical Assistance Program. (TGC 531.021).

HHSC's disclosure of the Texas Medicaid Program (TMP) data pursuant to this agreement is for purposes directly connected with the administration of the TMP program, in compliance with Texas Human Resources Code sections 12.003 and 21.012, and CFR 431.300 through 431.307. Those purposes are the detection, prosecution and deterrence of fraud and abuse (F&A) in the TMP, and the enforcement of state law relating to the provisions of program services (TGC 531.102).

PURPOSE (S) OF THE MATCHING PROGRAM:

The purpose of this agreement is to establish the conditions, safeguards, and procedures under which the Centers for Medicare & Medicaid Services (CMS) will conduct a computer matching program with the State of Texas Health and Human Services Commission (HHSC) to study claims, billing, and eligibility information to detect suspected instances of Medicare and Medicaid fraud and abuse (F&A) in the State of Texas. CMS and HHCS will provide TriCenturion, a CMS contractor (hereinafter referred to as the

"Custodian"), with Medicare and Medicaid records pertaining to eligibility, claims, and billing which the Custodian will match in order to merge the information into a single database. Utilizing fraud detection software, the information will then be used to identify patterns of aberrant practices requiring further investigation. The following are examples of the type of aberrant practices that may constitute F&A by practitioners, providers, and suppliers in the State of Texas expected to be identified in this matching program: (1) billing for provisions of more than 24 hours of services in one day, (2) providing treatment and services in ways more statistically significant than similar practitioner groups, and (3) up-coding and billing for services more expensive than those actually performed.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:

The release of the data for CMS are maintained in the following SOR: National Claims History (NCH), System No. 09–70–0005 was most recently published in the **Federal Register**, at 67 FR 57015 (September 6, 2002). NCH contains records needed to facilitate obtaining Medicare utilization review data that can be used to study the operation and effectiveness of the Medicare program. Matched data will be released to HHSC pursuant to the routine use as set forth in the system notice.

Carrier Medicare Claims Record, System No. 09–70–0501 published in the **Federal Register** at 67 FR 54428 (August 22, 2002). Matched data will be released to HHSC pursuant to the routine use as set forth in the system notice.

Enrollment Database, System No. 09–70–0502 (formerly known as the Health Insurance Master Record) published at 67 FR 3203 (January 23, 2002). Matched data will be released to HHSC pursuant to the routine use set forth in the system notice.

Intermediary Medicare Claims Record, System No. 09–70–0503 published in the **Federal Register** at 67 FR 65982 (October 29, 2002). Matched data will be released to HHSC pursuant to the routine use as set forth in the system notice.

Unique Physician/Provider Identification Number (formerly known as the Medicare Physician Identification and Eligibility System), System No. 09–70–0525, was most recently published in the **Federal Register** at 53 FR 50584 (Dec 16, 1988). Matched data will be released to HHSC pursuant to the routine use as set forth in the system notice.

Medicare Supplier Identification File, System No. 09–70–0530 was most recently published in the **Federal Register**, at 67 FR 48184 (July 23, 2002). Matched data will be released to HHSC pursuant to the routine use as set forth in the system notice.

Medicare Beneficiary Database, System No. 09–70–0536 published in the **Federal Register** at 67 FR 63392 (December 6, 2001). Matched data will be released to HHSC pursuant to the routine use as set forth in the system notice.

The data for HHSC are maintained in the following data files: The data that the Texas Medicaid Fraud and Abuse Detection System (MFADS) receives from the acute care claims processor comprises over 320 files. These files include not only the claims data, but also all other data necessary to process the claim such as client, provider, and reference information. The Texas Medicaid claims administrator vendor utilizes a real-time transaction processing system to adjudicate the claims and therefore, has organized the data to facilitate efficient transaction processing. This data organization results in the data being parsed out over a number of data tables. It is these data tables that are extracted for processing by the MFADS. As these files are received, they are organized or reassembled into an Oracle relational database to support access using the MFADS tools.

In addition to the organization of the data, there are numerous updates that take place during the monthly load process. The monthly acute extracts that are received contain data that has finalized during the month. Therefore, these files must be applied to the multi-year database, changing some of the data through an update process as well as adding additional records. It is due to these reasons that the data will be extracted from the MFADS database rather than from incoming data sources. All or part of these elements may be used in this data-matching program.

INCLUSIVE DATES OF THE MATCH:

The CMP shall become effective no sooner than 40 days after the report of the Matching Program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, which ever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 04–7630 Filed 4–5–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

American Indian-Alaska Native Head Start-University Partnerships Program

Federal Agency Contact Name: Administration for Children and Families (ACF) & Office of Planning, Research and Evaluation (OPRE).

Funding Opportunity Title: American Indian-Alaska Native Head Start-University Partnerships.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2004–ACF–OPRE–YF–0002.

CFDA Number: 93.600.

Due Date for Letter of Intent (Encouraged): 3 weeks prior to June 7, 2004.

Due Date for Applications (Required): The due date for the receipt of applications is June 7, 2004.

I. Funding Opportunity Description

Funds are provided for American Indian-Alaska Native Head Start-University Partnerships to build model research partnerships between American Indian-Alaska Native program staff, members of tribal communities, and researchers.

This grant program is part of a larger Head Start research effort. Three other grant funding mechanisms are being offered concurrently with the one described in this announcement. They include: (1) Head Start-University Partnerships: Measurement Development for Head Start Children and Families, (2) Head Start Graduate Student Research Grants, and (3) Head Start Graduate Student Research Partnership Development Grants. For more information, please see these other Head Start Research announcements listed in the **Federal Register** or listed on *http://www.Grants.Gov*, or send an inquiry to the email address listed above.

Priority Area: American Indian-Alaska Native Head Start-University Partnerships.

A. Purpose

This new initiative creates an opportunity for building model research partnerships between American Indian—Alaska Native program staff, members of tribal communities, and

researchers based in universities and other nonprofit research institutions. Research partnerships are intended to expand on the strengths of the researchers and grantee partners who constitute the partnerships in order to benefit the larger Head Start and early childhood community. Grantees are experts on the available strengths and needs of their families and communities, as well as the particular histories of their programs, and are expected to be valuable partners in developing research goals and questions. Grantees can usually benefit from technical expertise of researchers in all aspects of the initiative, from selection of assessment tools appropriate for their curriculum, methods for administering assessments, methods for measuring classroom quality, approaches for data entry and management, techniques for data analysis, and training of staff who will be responsible for each phase. Such partnerships necessitate that researchers become familiar with the goals, approaches, and existing systems. They also require that the technical experts encourage professional development of program personnel to become increasingly adept at managing research and evaluation on their own. The successful partnership will be able to provide evidence that the research project is developing information to improve the early learning environments for American Indian—Alaska Native Head Start children.

The lessons learned from model partnerships can then be disseminated through training and technical assistance, both through the Head Start network and by other means. Examples of products expected from these partnerships include, but are not limited to: Methodological approaches for sampling, assessment and analysis at the local program level; plans for reporting data to teachers, parents, and management staff; data management systems; integrated curricular and assessment approaches; professional development approaches including coursework and training materials; and plans for disseminating information to the broader Head Start and child development communities.

B. Statutory Authority

Section 649 of the Head Start Act, as amended by the Coats Human Services Reauthorization Act of 1998 (Pub.L. 105–285) and 42 U.S.C. 9844.

C. Background

The American Indian-Alaska Native Program Branch funds Head Start and Early Head Start programs operated by tribes, consortia, and/or corporations. The majority of grantees serve and reside on tribal reservations. Generally, grants are awarded to tribal governments, with tribal presidents, governors, executive directors or administrators as authorizing officials.

American Indian and Alaska Native (AI–AN) Head Start programs reflect the diversity of languages and traditions that exist in AI–AN cultures. Substantial numbers of children served by the AI–AN Branch speak an American Indian language or language other than English or Spanish as their dominant language. The programs vary greatly in size, with the smallest grantee serving about 15 children and the largest, more than 4,000 children and families. The programs also are geographically diverse, and are located in isolated rural settings as well as in urban areas. AI–AN grantees provide comprehensive services to children and families through center and home-based options, as well as combinations and locally designed configurations.

Because legislative mandates have specifically excluded tribal programs from national Head Start research and evaluation activities (Head Start Authorization Act, October 27, 1998, Section 649(g)(4)), current national research and evaluation activities of Head Start, such as the Family and Child Experiences Survey (FACES) and the Head Start Impact Study, exclude tribal programs from the population eligible for inclusion in the samples. The unique values, attitudes, and characteristics of the many different tribes create methodological challenges for inclusion in nationally representative samples for evaluation research.

At the same time, there are legislative provisions that require the study of Head Start programs for American Indian and Alaska Native children. Tribal Head Start programs have the same performance standards and requirements for assessing program outcomes as other Head Start programs. There is little prior research evidence available, however, to provide guidance about effective instructional, service delivery, or assessment approaches in tribal settings.

American Indian and Alaska Native Head Start programs need to be included in Head Start Bureau efforts to enhance the quality of Head Start programming, and to improve accountability by strengthening screening and assessment of child outcomes and program monitoring. There is a need, however, to increase the evidence base to provide direction for program enhancements, and such activities must be conducted in a manner that takes into account the unique cultural values of tribes implementing Head Start programs.

For historical and ethical reasons tribal communities must have a significant voice in how research is designed and conducted in those settings. To support the development and implementation of research within and by tribal communities, ACF undertook in FY2002 an effort to document the existing knowledge base concerning early childhood programming and assessment in tribal settings, and to collect information on the research needs and priorities of tribal Head Start programs. Little was known about what research was currently being conducted by tribal Head Start programs, what the experiences of tribal programs in research partnerships with colleges and universities had been, and how ACF might support these partnerships. The project resulted in a review and synthesis of available research literature, both published and unpublished, that pertained to young children and families in American Indian and Alaska Native populations. That report is available online at: *http://www.acf.dhhs.gov/programs/core/ongoing_research/hs/hs_aian_report.html.*

A second part of this effort was to conduct a series of visits to tribes to assess their own views about the following questions: (1) What kind of research is needed and desired in tribal Head Start settings; (2) what outcomes are important for American Indian and Alaska Native Head Start; (3) what programmatic and service delivery issues need to be studied; and (4) what are the issues in conducting research among American Indian and Alaska Native populations? Visits were arranged with 19 tribes to conduct "listening sessions" with tribal leadership, Head Start personnel, Head Start family members, and other community stakeholders. Other sessions were held in conjunction with national meetings of American Indian—Alaska Native Head Start grantees and technical assistance staff.

These efforts have documented the paucity of existing research that directly informs early childhood programming for American Indian and Alaska Native children and families. Few studies have taken into account the unique cultural and linguistic characteristics of the AI–AN population, and existing studies tend to be small, methodologically weak, and of limited generalizability to other settings. There is a need to develop the capacity for research in

tribal settings; research projects rarely are initiated by tribal members themselves, and the number of qualified individuals who have the ability to effectively partner with tribes to implement research is thought to be quite limited. At the same time, there is widespread recognition of the need for culturally relevant research, as well as substantial support among tribal members for research that will advance the knowledge base and improve the lives of the children and families who are served by Head Start in their communities.

Tribal communities have affirmed that they must have a significant voice in how the research is designed and conducted among their members. Cultural issues must be addressed in the development of methodologies, study procedures, and data collection instruments for use in conducting research among tribal Head Start programs. Differences among American Indian/Alaskan Native groups must be acknowledged and respected in developing the methodology and conducting the research. In addition to Head Start personnel, tribal leaders and community elders often must be part of the process in designing and conducting research in tribal settings.

The participants in the listening sessions identified a number of topics of interest to tribes, including:

- Identifying and addressing the unique characteristics and needs of American Indian and Alaska Native Head Start children and families that may affect learning; documenting and addressing cultural diversity within tribal Head Start settings;
- The role of Head Start in promoting and maintaining native languages and culture;
- Outcomes for bilingual children vs. English-only speakers;
- Long-term outcomes for AI–AN Head Start children, including studies of factors that promote or inhibit the successful transition to school and studies that compare outcomes for AI–AN Head Start children with those for other Head Start children;
- Comparisons of tribal Head Start children to non-tribal children;
- Effectiveness of instructional practices, tailored to the unique characteristics of tribal children, that promote school readiness;
- Availability of resources to meet unique tribal needs;
- Programs aimed at health and development, including health delivery models as well as preventive programs for adverse health and mental health outcomes;
- Staff development issues, including wage and benefit comparability between AI–AN and non-tribal early childhood educators, causes of staff turnover, ways to retain staff, identification of staff members' academic and non-academic skills that best promote child development within a cultural context, and providing staff development opportunities in geographically isolated communities;
- Development and utilization of culturally appropriate screening, assessment, and outcome measures;
- Methods for enhancing communication and cooperation among Head Start personnel, parents, tribal governments, and school district personnel;
- Identification of special needs among AI–AN Head Start children, and programs for addressing them;
- Effectiveness of methods for enhancing parent involvement, including promotion of knowledge about child development among parents, promotion of adult literacy, and promotion of father involvement;
- Impact of adverse conditions on child development, including geographic isolation and poverty, adverse family circumstances such as domestic violence or substance abuse, and historical experiences of racism, discrimination, and organized efforts aimed at the destruction of AI–AN culture.

Building on the needs identified both by participants in the Listening Sessions and by other consultants, this announcement will support research activities that are designed to promote partnerships between the research community and tribal communities that will support the development of young children and families in American Indian and Alaska Native Head Start and Early Head Start programs. Each partnership team of one or more AI–AN grantees and a research organization will identify or further develop a particular, self-selected research approach targeted toward better describing the unique characteristics and developmental needs of AI–AN children, evaluating or enhancing program practices, and/or developing approaches to outcomes assessment, based on the needs of the population served. The successful partnership will address topics that are decided through consultation among the researchers, AI–AN staff, and other tribal stakeholders, and that clearly reflect the interests of the AI–AN Head Start program.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Program Funding: $1,000,000.

Anticipated Number of Awards: ACF anticipates funding 4–6 projects.

Ceiling on Amount of Individual Awards:

The Federal share of project costs shall not exceed $200,000 for the first 12-month budget period inclusive of indirect costs and shall not exceed $200,000 per year for the second through third 12-month budget periods.

An application that exceeds the upper value of the dollar range specified will be considered "non-responsive" and be returned to the applicant without further review.

Floor of Individual Award Amounts: None specified.

Average Projected Award Amount: None specified.

Project Periods for Awards: Project periods will be up to three years. Initial awards will be for the first one-year budget period. Requests for a second and/or third year of funding within the project period should be identified in the current application (on SF–424A), but such requests will be considered in subsequent years on a noncompetitive basis, subject to the applicant's eligibility status, the availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Government.

III. Eligibility Information

1. Eligible applicants include the following:

- State controlled institutions of higher education
- Private institutions of higher education
- Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education
- Other: Faith-based and community organizations that meet all other eligibility requirements

Additional Information on Eligibility

A. Eligible applicants are universities, four-year colleges, and not-for profit institutions on behalf of researchers who hold a doctorate degree or equivalent in their respective fields. The Principal Investigator must conduct research as a primary professional responsibility, and have published or have been accepted for publication in the major peer-reviewed research journals in the field as a first author or second author.

B. An important element of this announcement is the requirement that researchers demonstrate a partnership or partnerships with Head Start or Early Head Start programs as part of all

research efforts, including the development, piloting, refinement, training, and use of measures. The application must contain a letter from the Head Start or Early Head Start program certifying that they have entered into a partnership with the applicant and the application has been reviewed and approved by the Head Start Policy Council (*see Section IV. Application and Submission Information* for further details about these letters).

C. The Principal Investigator must agree to attend two meetings each year. The first is an annual grantee meeting which is typically scheduled during the summer or fall of each year and is held in Washington, DC The second meeting each year alternates between the biennial Head Start National Research Conference in Washington, DC (June 28 to July 1, 2004) and the biennial meeting of the Society for Research in Child Development-SRCD (April, 2005). The budget should reflect travel funds for such purposes.

D. Faith-based and community organizations that meet all other eligibility criteria are eligible to apply.

E. Any nonprofit organization submitting an application must submit proof of its nonprofit status at the time of submission. Any of the following constitutes proof of nonprofit status:

- A copy of the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A written statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a nonprofit status and that none of the net earning accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status.
- Any of the items above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local nonprofit affiliate.

F. Private, nonprofit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Nonprofit Grant Applicants" at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

2. Cost Sharing or Matching.

There is no matching requirement.

3. Other.

All applicants must have Dun & Bradstreet numbers. On June 27, 2003 the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com*.

Applications that fail to follow the required format described in *Section IV.2. Content and Form of Application Submission* will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that exceed the $200,000 ceiling will be considered non-responsive and will not be eligible for funding under this announcement.

IV. Application and Submission Information

1. Address To Request Application Package

The Head Start Research Support Technical Assistance Team, 1 (877) 663–0250, is available to answer questions regarding application requirements and to refer you to the appropriate contact person in ACF for programmatic questions. You may also email your questions to: opre@xtria.com. Refer to the Funding Opportunity Number: HHS–2004–ACF–OPRE–YF–0002. ACYF Operations Center/OPRE Grant Review Team/Xtria, LLC, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, Attention: American Indian-Alaska Native Head Start-University Partnerships, 1 (877) 663–0250, E-mail *opre@xtria.com*.

URL to Obtain an Application: Copies of this Program Announcement may be downloaded approximately 5 days after publication in the **Federal Register** at *http://www.acf.dhhs.gov/programs/core/ongoing_research/funding/funding.html*. Application materials described in *Section IV.* can be downloaded from the following web site: *http://www.acf.hhs.gov/programs/ofs/forms.htm#apps*.

2. Content and Form of Application Submission

An original and two copies of the complete application are required. The original copy must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound. The two additional copies of the complete application must include all required forms, certifications, assurances, and appendices and must also be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers, if otherwise required for individuals. The copies may include summary salary information.

Format and Organization. Applicants are strongly encouraged to limit their application to 100 pages, double-spaced, with standard one-inch margins and 12 point fonts. This page limit applies to both narrative text and supporting materials but not the Standard Federal Forms (see list below). Applicants must number the pages of their application beginning with the Table of Contents.

Applicants are advised to include all required forms and materials and to organize these materials according to the format, and in the order, presented below:

a. Cover Letter
b. Contact information sheet (see details below)
c. Standard Federal Forms
   Standard Application for Federal Assistance (form 424) Budget Information—Non-construction Programs (424A) Certifications Regarding Lobbying Disclosures of Lobbying Activities (if necessary) Certification Regarding Environmental Tobacco Smoke Assurance Regarding Non-construction Programs (form 424B) Assurance Regarding Protection of Human Subjects
d. Table of Contents
e. Project Narrative Statement (see details below)
f. Appendices
   Proof of Nonprofit Status (see Section V.1.F) Letter(s) of agreement with Head Start program(s) (see details below) Letter(s) of agreement with Head Start Policy Council(s) (see details below) Curriculum Vitae for

Principal Investigators

You may submit your application to us in either electronic or paper format.

To submit an application electronically, please use the *http://www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- 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 all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. ACF will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *http://www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

Private non-profit organizations may voluntarily submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Nonprofit Grant Applicants" at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Content of Contact Information Sheet: The contact information sheet should include complete contact information, including addresses, phone and fax numbers, and e-mail addresses, for the Principal Investigator(s) and the institution's grants/financial officer (person who signs the SF–424).

Content of Project Narrative Statement: The project narrative should be carefully developed in accordance with ACF's research goals and agenda as described in the Purpose, Background, and Priorities of this funding opportunity, and the structure requirements listed in *Section V. Application Review Information.* Please *see Section V.1. Criteria* for instructions on preparing the project summary/abstract and the full project description.

Content of Letters of Agreement: For research conducted with Head Start, the application must contain (A) an original copy of a letter from the Head Start or Early Head Start program certifying that they have entered into a research partnership with the applicant and (B) a separate letter certifying that the application has been reviewed and approved by the local Head Start Program Policy Council. Certification of approval or pending approval by the Policy Council must be an original letter from the official representative of the Policy Council itself.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on June 7, 2004. Mailed or handcarried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center/OPRE Grant Review Team/Xtria, LLC, c/o Dixon Group, Inc., Attention: American Indian-Alaska Native Head Start-University Partnerships, 118 Q Street, NE., Washington, DC 20002–2132.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand-carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 9 a.m. and 4:30 p.m. (EST), Monday through Friday (excluding Federal holidays) at the above address. Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, when there are widespread disruptions of mails service, or in other rare cases. Determinations to extend or waive deadline requirements rest with the ACF Chief Grants Management Officer.

Due Date for Letters of Intent (Encouraged): 3 weeks prior to June 7, 2004. If you plan to submit an application, ACF requests you notify us by fax or e-mail at least three weeks prior to the submission deadline date. This information will be used only to determine the number of expert reviewers needed to review the applications. Include only the following information in this fax or email: the number and title of this announcement; the name, address, telephone and fax number, e-mail address of the Principal Investigator(s), the fiscal agent (if known); and the name of the university or nonprofit institution. Do not include a description of your proposed project. Send this information to "The Head Start Research Support Team" at—Fax: 1 (703) 821–3989 or E-mail: *opre@xtria.com.*

The table below provides additional detail about the standard Federal forms that need to be submitted, including what information is required on them, where these forms can be found, and when they must be submitted.

What to submit	Required content	Required form or format	When to submit
Standard Application for Federal Assistance (form SF 424).	Must be filled out completely, signed, and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

What to submit	Required content	Required form or format	When to submit
Budget Information—Non-construction Programs (form SF 424A).	Must be filled out completely and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Certification Regarding Lobbying.	Must be signed and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Disclosure of Lobbying Activities (SF LLL).	If necessary (*see* Certification Regarding Lobbying), must be filled out completely, signed, and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Certification Regarding Environmental Tobacco Smoke.	Copy must be enclosed with application (signing and submitting the proposal certifies its content).	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Assurance Regarding Non-construction Programs (form SF 424B).	Must be signed and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Assurance Regarding Protection of Human Subjects.	Must be filled out completely, signed, and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

Additional Forms: Private non-profit organizations may voluntarily submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Nonprofit Grant Applicants" at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-six jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodation or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, Washington, DC 20447. A current list of the Single Points of Contact (SPOCs) for each State and Territory is posted at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc. html.*

5. Funding Restrictions

A. Pre-award costs are not allowable.

B. The applicant is strongly encouraged to apply the University's or nonprofit institution's off-campus research rates for indirect costs.

6. Other Submission Requirements

Electronic Address to Submit Applications: http://www.Grants.Gov

Electronic Submission: Please see Section IV.2. Content and Form of Application Submission for guidelines and requirements when submitting applications electronically.

Submission by Mail: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center/OPRE Grant Review Team/Xtria, LLC, c/o Dixon Group, Inc., Attention: American Indian-Alaska Native Head Start-University Partnerships, 118 Q Street, NE., Washington, DC 20002–2132.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Hand Delivery: Applications hand-carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 9 a.m. and 4:30 p.m. (EST), Monday through Friday (excluding Federal holidays) at the above address. Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Due Date for Letters of Intent (Encouraged): 3 weeks prior to June 7, 2004. If you plan to submit an application, ACF requests you notify us by fax or e-mail at least three weeks prior to the submission deadline date. This information will be used only to determine the number of expert reviewers needed to review the applications. Include only the following information in this fax or email: the number and title of this announcement; the name, address, telephone and fax number, e-mail address of the Principal Investigator(s), the fiscal agent (if known); and the name of the university or nonprofit institution. Do not include a description of your proposed project. Send this information to "The Head Start Research Support Team" at—Fax: 1 (703) 821–3989 or E-mail: *opre@xtria.com.*

V. Application Review Information

1. Criteria

The Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information. The project description is approved under OMB Control Number 0970–0139 which expires 3/31/2004. 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.

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

A. *Project Summary/Abstract:* Provide a summary of the project description (one page or less) with reference to the funding request.

B. *Objectives and Need for Assistance:* Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support from concerned parties other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

C. *Results and Benefits Expected:* Identify the results and benefits to be derived. For example, explain how your proposed project will achieve the specific goals and objectives you have set; specify the number of children and families to be served, and how the services to be provided will be funded consistent with the local needs assessment. Or, explain how the expected results will benefit the population to be served in meeting its needs for early learning services and activities. What benefits will families derive from these services? How will the services help them? What lessons will be learned which might help other agencies and organizations that are addressing the needs of a similar client population?

D. *Approach:* Outline a plan of action, which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearances may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

E. *Evaluation:* Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives, and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met, and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

F. *Additional Information:* Following are requests for additional information that need to be included in the application:

1. *Staff and Position Data:* Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

2. *Organizational Profiles:* Provide information on the applicant organizations(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any nonprofit organization submitting an application must submit proof of its nonprofit status in its application at the time of submission.

The nonprofit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate; or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

3. *Letters of Support:* Provide statements from the community, public and commercial leaders that support the project proposed for funding. All documents must be included in the application at the time of submission.

G. *Budget and Budget Justification:* Provide line item detail and detailed calculations for each budget object class identified in the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General: The following are guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or Principal Investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops must be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information, which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Description: Enter the total of all other costs. Such costs, where applicable and

appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description, and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Evaluation Criteria

Competitive Criteria for Reviewers: American Indian-Alaska Native Head Start-University Partnerships—The three criteria areas that follow will be used to review and evaluate each application. Address each in the Project Narrative Section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. (100 points total).

Approach: 45 points.

- The extent to which the proposal provides evidence that the research plan has been jointly developed by the research institution and the Head Start program, as well as other relevant tribal stakeholders;
- The extent to which the research plan is adequately described and meets the goal of supporting the development of children in American Indian and Alaska Native Head Start.
- The extent to which the proposal is responsive to the questions outlined in the "additional requirements" section
- The extent to which the research design is appropriate and sufficient for addressing the questions of the study
- The extent to which the planned research specifies the measures to be used, their psychometric properties, and the analyses to be conducted.
- The extent to which the planned procedures and measures are appropriate and sufficient for the questions of the study and the cultural contexts of the population to be studied.
- The extent to which the planned measures and analyses both reflect knowledge and use of state-of-the-art measures and analytic techniques and/or advance the state of the art.
- The extent to which the analytic techniques are appropriate for the question under consideration.
- The extent to which the proposed sample size is sufficient for the study.
- The extent to which the planned approach includes techniques for successful documentation and dissemination.
- The extent to which the budget and budget justification are appropriate for carrying out the proposed project.

Staff and Position Data: 35 points.

- The extent to which the Principal Investigator and other key research staff possess the research expertise necessary to implement the intervention and conduct the evaluation as demonstrated in the application and information contained in their vitae. It is expected that the Principal Investigator(s) has earned a doctorate or equivalent in the relevant field and has first or second author publications in major research journals.
- The extent to which the proposed staff reflect an understanding of and sensitivity to the issues of working in a tribal community setting and in partnership with American Indian—Alaska Native Head Start program staff and parents.
- The adequacy of the time devoted to this project by the Principal Investigator and other key staff in order to ensure a high level of professional input and attention.
- The extent to which the research plan offers opportunities for American Indian and Alaska Native personnel to be engaged or employed in the research activities, as appropriate.

Results or Benefits Expected: 20 points.

- The extent to which research questions are clearly stated.
- The extent to which the proposed research project is justified as meeting the needs of American Indian and Alaska Native children and families.
- The extent to which the research study makes a significant contribution to the knowledge base about supporting the early development of American Indian and Alaska Native children and their families.
- The extent to which the literature review is current and comprehensive and justifies the research to be conducted.
- The extent to which the questions that will be addressed or the hypotheses that will be tested are sufficient for meeting the stated objectives.
- The extent to which the proposal contains a dissemination plan that encompasses both professional and practitioner-oriented products, and meets the needs of the Head Start and/or community partner.
- The extent to which the questions are of importance and relevance for AI-AN children's development and welfare.

2. Review and Selection Process

Each application will undergo an eligibility and conformance review by Federal staff. Applications that pass the eligibility and conformance review will be evaluated on a competitive basis according to the specified evaluation criteria.

The competitive review will be conducted in the Washington, DC metropolitan area by panels of Federal and non-Federal experts knowledgeable in the areas of early childhood education and intervention research, early learning, child care, and other relevant program areas.

Application review panels will assign a score to each application and identify its strengths and weaknesses.

OPRE will conduct an administrative review of the applications and results of the competitive review panels and make recommendations for funding to the Director of OPRE.

The Director of OPRE, in consultation with the Commissioner of the Administration on Children, Youth, and

Families (ACYF), will make the final selection of the applications to be funded. Applications may be funded in whole or in part depending on: (1) The ranked order of applicants resulting from the competitive review; (2) staff review and consultations; (3) the combination of projects that best meets the Bureau's objectives; (4) the funds available; and (5) other relevant considerations. The Director may also elect not to fund any applicants with known management, fiscal, reporting, program, or other problems, which make it unlikely that they would be able to provide effective services.

VI. Award Administration Information

1. Award Notices

Successful applicants will be notified through the issuance of a Financial Assistance Award notice that sets forth the amount of funds granted, the terms and conditions of the grant award, the effective date of the award, the budget period for which initial support is given, and the total project period for which support is provided. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail. Organizations whose applications will not be funded will be notified in writing by ACF.

2. Administrative and National Policy Requirements

All applicants are responsible for conforming to the United States Executive Branch Code of Federal Regulations *(http://www.gpoaccess.gov/cfr/index.html).* The following regulations have been identified as having particular relevance for ACF grants: 45 CFR Parts 74 and 92.

3. Reporting Requirements

Programmatic Reports: Semi-annually and a final report is due 90 days after the end of the grant period.

Financial Reports: (SF–269 long form) Semi-annually and a final report is due 90 days after the end of the grant period.

Original reports and one copy should be mailed to: Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants 370 L'Enfant Promenade, SW., Washington, DC 20447.

VII. Agency Contacts

1. Program Office Contact ACYF Operations Center/OPRE Grant Review Team/Xtria, LLC, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, Attention: American Indian-Alaska Native Head Start-University Partnerships, 1 (877) 663–0250, E-mail *opre@xtria.com.*

2. Grants Management Office Contact, Sylvia Johnson, ACF Division of Discretionary Grants, 370 L'Enfant Promenade, Washington, DC 20447, 1 (202) 260–7622, E-mail: *sjohnson@acf.hhs.gov.*

VIII. Other Information

Applicants under this announcement are advised that subsequent sale and distribution of products developed under this grant will be subject to the Code of Federal Regulations, Title 45, Part 74 or Part 92.

The use of secondary data analysis in order to refine and validate newly-developed measures in relation to already standardized measures is strongly advised.

Definitions

Budget Period—for the purposes of this announcement, budget period means the 12-month period of time for which ACF funds are made available to a particular grantee (*e.g.*, beginning on September 16, 2004, and ending on September 15, 2005).

Project Period—for the purposes of this announcement, project period means the 36-month period starting by September 2004, and ending by September, 2007.

Dated: March 26, 2004.

Naomi Goldstein,

Acting Director, Office of Planning, Research, and Evaluation.

[FR Doc. 04–7260 Filed 4–5–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Board to the Food and Drug Administration; 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: Science Board to the Food and Drug Administration.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 22, 2004, from 8 a.m. to 5 p.m.

Location: Food and Drug Administration, 5630 Fishers Lane, rm. 1066, Rockville, MD.

Contact Person: Jan Johannessen, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6687, or e-mail: *jjohannessen@oc.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512603. Please call the Information Line for up-to-date information on this meeting.

Agenda: The Board will hear about and discuss FDA's Obesity Working Group report (*http://www.fda.gov/oc/initiatives/obesity/*) and the Critical Path white paper (*http://www.fda.gov/bbs/topics/news/2004/NEW01035.html*).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 15, 2004. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 15, 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 Jan Johannessen 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 29, 2004.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 04–7676 Filed 4–5–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

National Association of Community Health Representatives

AGENCY: Indian Health Service, HHS.

ACTION: Notice of new developmental non-competitive single source Cooperative Agreement with the National Association of Community Health Representatives.

SUMMARY: The Indian Health Service (IHS) announces a new developmental non-competitive single source Cooperative Agreement with the National Association of Community Health Representatives (NACHR). The application is for a five year project period with one year budget periods to be awarded on April 15, 2004. The initial budget period will be awarded at $90,000.00 and the entire project is expected to be awarded at $450,000.00. This award is for start up cost to research and study ways to improve the provision of health services delivery, outreach and health education for Native American people by studying ways to enhance communications among American Indian/Alaska Native communities, the IHS and Community Health Representatives (CHR) as health providers/educators/advocates; by publishing an informative newsletter for members; by coordinating and co-sponsoring a Biannual Educational Conference for CHR programs' staff; by establishing links with other national Indian organizations and with professional groups to serve as advocates for CHR providers; and by actively seeking other funding sources to ensure sustainability in pursuing its mission. Continuation awards will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

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:

1. The Association will publish, at least twice a year, a newsletter for members, focusing on health promotion/disease prevention activities and models of best or improving practices. The newsletter will be available in both hard copy and electronically.

2. The Association will present a Biannual Educational Conference which supports training and continuing education for Community Health Representatives.

3. The Association will explore and implement the most efficient ways to establish links with other national Indian organizations, with professional groups and with Federal, state, and local entities to serve as advocates for the CHR providers who work with American Indian/Alaska Natives nationwide.

4. The Association will develop and submit at least two proposals for funding that further the mission, goals, and objectives of CHR programs to address health issues in the community and enhance service delivery. These proposals may be to Federal, state, regional, national, private, and foundation entities.

Justification for Single Source

This project has been awarded on a non-competitive single source basis. NACHR is the only nationwide organization that specifically represents approximately 264 individual, Tribally contracted AI/AN CHR programs. These CHR programs provide care to over half-million Native American people who live on Indian reservations or who live in non-reservation areas with significant Native American populations. The population served by these programs is the same as Indian Health Service's user population. The NACHR Board is comprised of one duly elected representative from each of the 12 IHS Areas. For over 15 years, NACHR has had the primary responsibility for advertising, coordinating and organizing the once every three years national educational conferences typically attended by over half (approximately 800 persons) hte CHR workforce. NACHR has provided a reliable means by which to obtain programmatic and logistical information along with informal tribal consultation. Its long history, record of accomplishment, and instutitional knowledge in representing tribal CHR programs make it uniquely qualified to carry out this project.

Use of Cooperative Agreement

This new development non-competitive single source Cooperative Agreement Award will involve:

1. Cathy Stueckemann, Project Official and IHS program staff, to approve articles to be included in the newsletters and may, as requested by the Association, provide articles.

2. IHS program staff to work with the Association in developing the Biannual Educational Conference.

3. IHS Program staff to have approval over the NACHR Board's hiring of key personnel as defined by regulation or provision in the cooperative agreement.

4. IHS Program staff to provide technical assistance to the NACHR Board and to attend at least one Board meeting.

Contacts: For further information, contact Cathy Stueckemann, JD, MPA, Public Health Advisor, CHR Program, Office of Clinical and Preventive Services, Office of Public Health, Indian Health Service, 801 Thompson Avenue, Reyes Building, Suite 300, Rockville, Maryland 20852, telephone (301) 443–2500. For grants information, contact Sylvia Ryan, Grants Management Specialist, Division of Acquisitions and Grants Management Branch, 801 Thompson Avenue, Suite 100, Rockville, Maryland 20852, telephone (301) 443–5204.

Dated: March 31, 2004.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 04–7663 Filed 4–5–04; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Reduction of HIV–1 Replication by a Mutant Apolipoprotein B mRNA Editing Enzyme-Catalytic Polypeptide-like 3G (APOBEC3G)

Vinay K. Pathak *et al.* (NCI).

U.S. Provisional Application filed 11 Feb 2004 (DHHS Reference No. E–073–2004/0–US–01).
Licensing Contact: Michael Ambrose; 301/594–6565; *ambrosem@mail.nih.gov.*

The invention describes a single amino acid substitution at D128K renders the human apolipoprotein B mRNA-editing enzyme-catalytic-like 3G (APOBEC3G) (CEM15) capable of inhibiting HIV–1 replication in the presence of HIV viral infectivity factor (Vif). HIV–1 and other retroviruses occasionally undergo hypermutation, characterized by high rate of G-to-A substitution. Studies have shown that human APOBEC3G is packaged into the retrovirus and deaminates deoxycytidine to deoxyuridine in newly synthesized viral minus-strand DNA, thereby inducing G-to-A hypermutation and viral inactivation. This innate mechanism of resistance to retroviral infection is counteracted by the HIV–1 Vif, which protects the virus by preventing the incorporation of APOBEC3G into virions by rapidly inducing it ubiquitination a proteosomal degradation. The inventors substituted several amino acids in human APOBEC3G with equivalent residues in simian APOBEC3G, which are resistant to HIV–1 VIF and determined the effects of the mutations on HIV–1 replication in the presence and absence of Vif. The Vif-resistant mutant could interact with HIV–1, but unlike the wild type of APOBEC3G, its intracellular steady-state levels were not reduced in the presence of HIV–1 Vif.

This technology provides a potential breakthrough for the treatment of HIV through gene therapy. By introducing the mutant version of APOBEC3G into hematopoietic stem cells and transfusing into HIV/AIDS patients, a level of resistance can be acquired. Further, using this mutation in a more classical vaccine approach to gene therapy is also envisioned.

Mucus Shaving Apparatus for Endotracheal Tubes

Lorenzo Berra, Theodor Kolobow (NHLBI).
DHHS Reference No. E–061–2004/0–US–01 filed 05 Feb 2004.
Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

DHHS seeks parties interested in manufacturing and commercializing an endotracheal tube cleaning apparatus for insertion into the inside of the endotracheal tube of a patient to shave away mucus deposits. This cleaning apparatus comprises a flexible central tube with an inflatable balloon at its distal end. Affixed to the inflatable balloon are one or more shaving rings, each having a squared leading edge to shave away mucus accumulations implicated in bacterial accumulation. In operation, the un-inflated cleaning apparatus is inserted into the endotracheal tube until its distal end is properly aligned with the distal end of the endotracheal tube. After proper alignment, the balloon is inflated by a suitable inflation device (*e.g.*, a syringe) until the balloon's shaving rings are pressed against the inside surface of the endotracheal tube. The cleaning apparatus is then pulled out of the endotracheal tube and in the process the balloon's shaving rings shave off the mucus deposits from the inside of the endotracheal tube.

Two papers have been submitted for presentations at the forthcoming American Thoracic Society meeting in Orlando, Florida, May 21–26, 2004. The abstract numbers and titles are (1) Abstract 3655, "A Novel System for the Complete Removal of all Mucus fro the Endotracheal Tubes: The Mucus Shaver", and (2) Abstract 3793, "A Novel System to Maintain Endotracheal Tube free from Secretions and Biofilm", which describes laboratory studies of its usage. The abstracts are available upon request.

Thermolabile Hydroxyl Protecting Groups and Methods of Use

Serge L. Beaucage, Marcin K. Chmielewski (FDA).
U.S. Provisional Application No. 60/469,312 filed 09 May 2003 (DHHS Reference No. E–154–2003/0–US–01).
Licensing Contact: Marlene Astor; 301/435–4426; *shinnm@mail.nih.gov.*

Synthetic oligonucleotides can be used in a wide variety of settings, which include gene therapy treatments, diagnostic and DNA sequencing microarray technology, and basic research. The NIH announces an improvement in oligonucleotide syntheses for potential application on glass microarrays. This improvement entails the incorporation of thermolytic hydroxyl protecting groups derived from 2-aminopyridine and its analogues into nucleosides and their phosphoramidite derivatives. This novel class of 2-pyridyl-substituted hydroxyl protecting groups can be efficiently cleaved under mild thermolytic conditions without the use of harsh chemicals such as strong acids or bases. As an example, this technology uses thermal cleavage (brief heat treatment at temperatures up to 90°) of terminal 5'-hydroxyl protecting groups on a growing oligonucleotide chain without inducing the formation of reactive radicals, which is in contrast to the currently used photochemical deprotection methods. In addition, the mild neutral conditions employed in the thermolytic approach, will help prevent glass surfaces from being harmed by the harsh reagents that are still being used in conventional solid phase oligonucleotide synthesis. The thermal cleavage method also permits accurate monitoring of coupling efficiency after each chain elongation step by the use of fluorescent thermolytic groups for hydroxyl protection of nucleoside phosphoramidite monomers. Thus, these thermolabile groups could be useful in manufacturing synthetic oligonucleotides on solid supports or in solution. Also, thermolabile groups may be used to protect/deprotect drug functional groups under conditions that will not affect other protecting groups on the molecule.

Long Term Retrievable Venous Filter

Ziv Neeman and Bradford Wood (NIHCC).
U.S. Provisional Application No. 60/543,766 (DHHS Reference No. E–061–2003/0–US–01).
Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

Available for licensing and commercialization is a novel long-term or biodegradable retrievable vena cava (IVC) filter that can be retrieved indefinitely regardless of the time it was placed, or alternatively dissolves without being removed, leaving no clinically relevant traces of its presence. IVC Filters are underutilized due to the complications associated with chronic indwelling, and long term consequences of IVC filters (like chronic venous insufficiency and venous stasis) has an uncertain, but high incidence. IVC filters would be more widely used for short term prophylaxis against one of the most underdiagnosed and deadly hospital acquired diseases, namely pulmonary embolism. Patients with burns, trauma, or undergoing orthopedic procedures like hip replacement are at high risk for venous clots, that could then migrate to the lung, which can be lethal. This design leaves in only several small mm long struts that are coated with drugs that prevent early clot formation on the struts and legs of the filter. The device includes struts that, upon removal of the filter, separate from the filter legs mechanical or electrical means and are left behind permanently embedded within the venous wall. Other designs include filters made from biodegradable polymers that dissolve over time without requiring removal.

This biodegradable filter may suit patients with temporary needs for protection (patients with prolonged immobility, hip replacement, trauma, intensive care patients).

Triplex Hairpin Ribozyme

Joseph A. DiPaolo (NCI), Luis Alvarez-Salas (EM).

U.S. Provisional Application No. 60/500,000 filed 23 Sep 2002 (DHHS Reference No. E–326–2002/0–US–01); PCT Application No. PCT/US03/29893 filed 23 Sep 2003 (DHHS Reference No. E–326–2002/0–PCT–02).

Licensing Contact: Michael Ambrose; 301/594–6565; *ambrosem@mail.nih.gov.*

Much work has focused on understanding and utilizing nucleic acids as biological catalysts. Indeed, progress has been made in determining the mechanism, kinetics and conformational requirements in harnessing these potential biological catalysts. This technology has value in its potential for gene therapy applications such as gene silencing.

The technology described is a recombinant plasmid or expression vector in which a DNA-encoded trans-acting hairpin ribozyme of interest is ligated to DNA-encoded cis-acting hairpin ribozyme. In this configuration, the cis-acting ribozyme serves to cleave the 5" and 3" ends of the trans-acting ribozyme of interest. The trans-acting ribozymes can be replaced with any user-defined sequence such as antisense RNA or RNAs of viruses. This unit provides several trans-acting hairpin ribozymes that are trimmed at the ends are further generated. Thus several independent ribozymes can be produced from a single transcribed RNA.

Dated: March 30, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–7697 Filed 4–5–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: United-State-Caribbean Basin Trade Partnership Act

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security 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: United States-Caribbean Basin Trade Partnership Act. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 70281) on December 17, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before May 6, 2004.

ADDRESSES: 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 Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via façsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: United States-Caribbean Basin Trade Partnership Act.

OMB Number: 1651–0083.

Form Number: CBP–450.

Abstract: The collection of information is required to implement the duty preference provisions of the United States-Caribbean Basin Trade Partnership Act.

Current Actions: This submission is being submitted to extend the expiration date without a change in the burden hours.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions, Not for profit institutions, Individuals.

Estimated Number of Respondents: 440.

Estimated Time Per Respondent: 42.5 hours.

Estimated Total Annual Burden Hours: 18,720.

Estimated Total Annualized Cost on the Public: $430,560.

If additional information is required contact: Daryl Joyner, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: March 29, 2004.

Daryl Joyner,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 04–7737 Filed 4–5–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the calendar quarter beginning April 1, 2004, the interest rates for overpayments will be 4 percent for corporations and 5

percent for non-corporations, and the interest rate for underpayments will be 5 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Trong Quan, National Finance Center, Collections Section, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278; telephone (317) 614–4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29,1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2004–26, the IRS determined the rates of interest for the calendar quarter beginning April 1, 2004, and ending June 30, 2004. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus four percentage points (4%) for a total of five percent (5%). For corporate overpayments, the rate is the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus four percentage points (4%) for a total of five percent (5%). These interest rates are subject to change for the calendar quarter beginning July 1, 2004, and ending September 30, 2004.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (Eff 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4

Dated: March 31, 2004.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 04–7662 Filed 4–5–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–26]

Notice of Submission of Proposed Information Collection to OMB: Restrictions on Assistance to Noncitizens

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.

HUD is prohibited from making financial assistance available to other than citizens or persons of eligible immigration status. This is a request for an extension of the current approval for HUD to require a declaration of citizenship or eligible immigration status from individuals seeking certain housing assistance. Eligible immigrants must provide (1) the original alien registration documents and submission of a (2) verification consent form.

DATES: *Comments Due Date:* May 6, 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 (2501–0014) 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 or on HUD's Web page at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*

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: Restrictions on Assistance to Noncitizens.

OMB Approval Number: 2501–0014.

Form Numbers: HUD–9886, HUD–9887.

Description of the Need for the Information and its Proposed use: HUD is prohibited from making financial assistance available to other than citizens or persons of eligible immigration status. This is a request for an extension of the current approval for HUD to require a declaration of citizenship or eligible immigration status from individuals seeking certain housing assistance. Eligible immigrants must provide (1) the original alien registration documents and submission of a (2) verification consent form.

Respondents: Individuals or households, Business or other for-profit, State, Local or Tribal Government.

Frequency of Submission: On occasion, Annually.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	2,886,392	10,794,339		0.0333		360,214

Total Estimated Burden Hours: 360,214.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 31, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–7811 Filed 4–5–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–961–1410–HY–P; AA–84417; CAA–12]

Waiver of Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice waives a portion of the regulations pertaining to selections made under subsection 14(h)(8) of the Alaska Native Claims Settlement Act (ANCSA) to allow Calista Corporation to file selections within the Calista regional boundaries. Calista Corporation is an Alaskan Native corporation established under Section 7 of ANCSA.

EFFECTIVE DATE: April 6, 2004.

FOR FURTHER INFORMATION CONTACT: Christy Favorite, Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599, (907) 271–5656 (Commercial or FTS), *cfavorit@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Favorite.

SUPPLEMENTARY INFORMATION: On August 8, 2002, Calista Corporation, an Alaskan Native regional corporation, requested the Secretary of the Interior to waive the following regulations:

(1) 43 CFR 2653.4(c). This waiver would allow the Bureau of Land

Management (BLM) to reopen the land selection period, and

(2) 43 CFR 2653.9(c). This waiver would allow BLM to suspend the requirement of the minimum acreage and 2-mile linear boundary for lands in application AA–84417.

Waiver of the regulations will allow the Corporation to proceed with planned development activities to fulfill its obligation to make a profit for its shareholders, and to improve the economic opportunities available to the people of the region. The Corporation chose the lands proposed for selection for their potential accomplish both objectives.

Waiver of Regulations

On August 8, 2002, Calista Corporation, an Alaskan Native regional corporation, requested a waiver of a portion of the regulations implementing Sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1613(h)(8). The Secretary of the Interior has concluded that the request meets the criteria for waiver as provided for in 43 CFR 2650.0–8.

As authorized by 43 CFR 2650.0–8, the Secretary waives the requirements of 43 CFR 2653.4(c) and 43 CFR 2653.9(c) for a period of 90 days from the date of this notice to allow Calista Corporation to finalize its proposed selections filed with BLM under the provisions of Sec. 14(h)(8) of ANCSA, as described in application AA–84417. This waiver does not apply to Tps. 8 and 9 S., R. 72 W., and T. 9 S., R. 73 W., Seward Meridian, Alaska.

Dated: March 26, 2004.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–7825 Filed 4–5–04; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–5853–EU]

Notice of Realty Actions: Competitive Sale of Public Lands in Clark County, NV; Termination of Recreation and Public Purposes Classification and Segregation; Withdrawal of the Formerly Classified Lands by the Southern Nevada Public Land Management Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell federally owned parcels of land in Clark County, Nevada, aggregating approximately 2,532.01 acres. All sales will be conducted on June 2, 2004, in accordance with competitive bidding procedures. The BLM also is terminating the R&PP classification of other lands in Clark County that are withdrawn by the Southern Nevada Public Land Management Act.

DATES: Comments regarding the proposed sale must be received by BLM on or before May 21, 2004.

Sealed bids must be received by BLM not later than 4:30 p.m., PDT, May 26, 2004.

All parcels of land proposed for sale are to be put up for purchase and sale, at public auction, beginning at 10 a.m., PDT, June 2, 2004. Registration for oral bidding will begin at 8 a.m., PDT, June 2, 2004. The public auction will begin at 10 a.m., PDT, June 2, 2004.

Other deadline dates for the receipt of payments, and arranging for certain payments to be made by electronic transfer, are specified in the proposed terms and conditions of sale, as stated herein.

ADDRESSES: Comments regarding the proposed sale, as well as sealed bids to be submitted to BLM, should be addressed to:

Field Manager, Las Vegas Field Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

More detailed information regarding the proposed sale and the lands involved may be reviewed during normal business hours (7:30 a.m. to 4:30 p.m.) at the Las Vegas Field Office (LVFO).

The address for oral bidding registration, and for where the public auction will be held, is: Sam's Town Hotel and Casino, 5111 Boulder Highway, Las Vegas, Nevada.

The auction will take place at Sam's Town Live, located within the Sam's Town Hotel and Casino.

FOR FURTHER INFORMATION CONTACT: You may contact Judy Fry, Program Lead, SALES at (702) 515–5081 or by email at *jfry@nv.blm.gov*. You may also call (702) 515–5000 and ask to have your call directed to a member of the Sales Team.

SUPPLEMENTARY INFORMATION: The following lands have been authorized and designated for disposal under the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343), as amended by the Clark County Conservation of Public Land and Natural Resources Act of 2002 (116 Stat. 1994), (hereinafter "SNPLMA"). These lands are proposed to be put up for purchase and sale by competitive auction on June 2, 2004, at an oral auction to be held in accordance with the applicable provisions of Sections 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1713 and 1719), respectively, and its implementing regulations, 43 CFR Part 2710, at not less than the fair market value (FMV) of each parcel, as determined by the authorized officer after an appraisal.

Lands Proposed for Sale

Mount Diablo Meridian, Nevada

T. 19 S, R. 59 E.,
  Sec. 2, W½NE¼SE¼NE¼, E½NW¼SE¼NE¼;
  Sec. 25, SE¼SE¼NW¼.
T. 19 S, R. 60 E.,
  Sec. 18, Lots 13 and 14, E½SE¼SW¼NE¼;
  Sec. 29, NE¼NE¼SW¼NW¼, SE¼NE¼SW¼NW¼;
  Sec. 31, NE¼NE¼NE¼NW¼, NE¼NE¼SE¼SW¼, SE¼NE¼SE¼SW¼, NW¼SE¼SE¼SW¼, SW¼SE¼SE¼SW¼, NE¼SW¼SE¼SE¼, SE¼SW¼SE¼SE¼;
  Sec. 32, NE¼NW¼SE¼NW¼, NW¼NW¼SE¼NW¼.
T. 20 S, R. 60 E.,
  Sec. 6, Lots 40 through 49, SE¼NW¼SW¼NE¼, NE¼SE¼SE¼NW¼, SE¼SE¼SE¼NW¼;
  Sec. 22, N½NE¼NW¼SE¼;
  Sec. 33, Lots 60 and 61.
T. 21 S., R. 60 E.,
  Sec. 3, Lots 88, 89 and 90;
  Sec. 24, S½SE¼;
  Sec. 28, N½NE¼SW¼SE¼SW¼, S½NE¼SW¼SE¼SW¼, SE¼SW¼SE¼SW¼, NW¼SE¼SE¼SW¼, SW¼SE¼SE¼SW¼.
T. 22 S, R. 60 E.,
  Sec. 15, NW¼NW¼NE¼SW¼, E½NE¼NW¼SE¼SW¼, NE¼NE¼NE¼SE¼;
  Sec. 16, W½NW¼NE¼NE¼SW¼, S½NE¼SE¼SW¼SE¼, W½NE¼NW¼SE¼SE¼, W½NW¼NW¼SE¼SE¼;
  Sec. 17, E½SE¼SW¼SE¼, W½SW¼SW¼SE¼;
  Sec. 21, NW¼NE¼SE¼NE¼, NW¼NE¼SW¼NW¼, N½NW¼SW¼NW¼, NW¼NE¼SE¼NW¼, NE¼NW¼SE¼NW¼;
  Sec. 22, E½NE¼SE¼SW¼SW¼;
  Sec. 23, SW¼NE¼SE¼NE¼;
  Sec. 24, NW¼NE¼NE¼NW¼, SE¼SW¼SW¼NW¼, SW¼SE¼SW¼NW¼, NW¼SW¼SW¼NE¼, SW¼SW¼SW¼NE¼, NW¼SE¼SW¼NE¼, SE¼SE¼SW¼NE¼, NW¼SW¼SE¼NE¼;

Sec. 26, W½NW¼NW¼SW¼.
T. 22 S, R. 61 E.,
Sec. 28, Lots 37 and 48;
Sec. 29, NW¼SE¼SW¼SE¼;
Sec. 30, SW¼NW¼SE¼NE¼,
W½NW¼SW¼SE¼NE¼;
Sec. 33, Lots 85 through 88.
T. 23 S, R. 61 E.,
Sec. 7, Lots 1 and 2, NE¼, E½NW¼,
NE¼SE¼;
Sec. 11, S½SE¼NE¼SW¼,
E½SE¼SW¼, S½S½NW¼SE¼,
SW¼SE¼, W½W½SE¼SE¼;
Sec. 14, W½W½NE¼NE¼,
SE¼SW¼NE¼NE¼, W½NE¼,
W½E½SE¼NE¼, W½SE¼NE¼,
E½E½NW¼, E½NE¼SW¼,
NE¼SW¼NE¼SW¼,
S½SW¼NE¼SW¼,
NE¼NE¼SW¼SW¼,
S½NE¼SW¼SW¼,
SW¼NW¼SW¼SW¼, S½SW¼SW¼,
SE¼SW¼, SE¼;
Sec. 15, SW¼NW¼NE¼SE¼,
SW¼NE¼SE¼, SW¼SE¼NE¼SE¼,
NE¼NE¼NW¼SE¼,
S½NE¼NW¼SE¼, S½NW¼SE¼,
S½SE¼;
Sec. 22, E½, SW¼;
Sec. 23, All;
Sec. 24, SW¼NW¼NW¼NW¼,
SW¼NW¼NW¼,
SW¼SE¼NW¼NW¼,
SE¼NE¼SW¼NW¼,
W½E½SW¼NW¼, W½SW¼NW¼,
E½SE¼SW¼NW¼,
W½SW¼SE¼NW¼, W½E½SW¼,
W½SW¼, W½NE¼SE¼SW¼,
SE¼SE¼SW¼.

Consisting of 71 Parcels Containing 2,532.01 Acres, More or Less.

The proposed sale will include nine (9) parcels that have been identified for sale at previous auctions, but did not sell because either they did not receive any bids, or the sales were cancelled due to default. These nine (9) parcels, identified as N–75200, N–77032, N–77040, N–77054, N–77055, N–77057, N–77065, N–76385 and N–76400, contain 1,966.25 acres, more or less. The nine (9) resale parcels will be auctioned under the terms and conditions of this Notice of Realty Action (NORA).

If a parcel of land is sold, the locatable mineral interests therein will be sold simultaneously as part of the sale. The lands identified for sale have no known locatable mineral value. An offer to purchase any parcel at auction will constitute an application for conveyance of the locatable mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50.00 non-refundable filing fee for processing the conveyance of the locatable mineral interests.

Terms and Conditions of Sale

The terms and conditions applicable to this sale are as follows:

All parcels are subject to the following:

1. All discretionary leaseable and saleable mineral deposits are reserved; but permittees, licensees, and lessees retain the right to prospect for, mine, and remove such minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

2. Rights-of-way are reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. All parcels are subject to valid existing rights. Parcels may also be subject to applications received prior to publication of this Notice if processing the application would have no adverse affect on the federally approved Fair Market Value (FMV). Encumbrances of record, appearing in the BLM public files for the parcels proposed for sale, are available for review during business hours, 7:30 a.m. PDT to 4:30 p.m. PDT, Monday through Friday, at the BLM LVFO.

4. All parcels are subject to reservations for roads, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' Transportation Plans.

5. No warranty of any kind, express or implied, is given by the United States as to the title, physical condition or potential uses of the parcels of land proposed for sale; and the conveyance of any such parcel will not be on a contingency basis. However, to the extent required by law, all such parcels are subject to the requirements of section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act, as amended (CERCLA) (42 U.S.C. 9620(h)).

6. All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentees' use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by federal or state environmental laws, off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by federal and state law. This covenant shall be construed as running with the parcels of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction.

7. Maps delineating the individual proposed sale parcels are available for public review at the BLM LVFO. Current appraisals for each parcel will be available for public review at the LVFO on or about April 5, 2004.

8. (a) Bids may be received in sealed envelopes for all parcels (with the exception of N–75200 and N–77125), or orally for all parcels at auction. Because of the Memorial Day holiday, all sealed bids must be received at the BLM LVFO, no later than 4:30 p.m., PDT, May 26, 2004. Sealed bid envelopes must be marked on the lower front left corner with the BLM Serial Number for the parcel and the sale date. Bids must be for not less than the federally approved FMV and a separate bid must be submitted for each parcel.

8. (b) Each sealed bid shall be accompanied by a certified check, money order, bank draft, or cashier's check made payable to the order of the Bureau of Land Management, for not less than 10 percent or more than 30 percent of the amount bid. The highest qualified sealed bid for each parcel will become the starting bid at the oral auction. If no sealed bids are received, oral bidding will begin at the FMV, as determined by the authorized officer.

9. All parcels will be put up for competitive sale by oral auction beginning at 10 a.m., PDT, June 2, 2004, at Sam's Town Live located inside of Sam's Town Hotel and Casino, 5111 Boulder Highway, Las Vegas, Nevada. Sam's Town Live is located near the box office and close to the movie theatres

within Sam's Town Hotel and Casino. Interested parties who will not be bidding are not required to register and may proceed directly to Sam's Town Live. If you are at the auction to conduct business with the high bidders or are there to observe the process, should seating become limited, you may be asked to relinquish your seat in order to provide seating for all bidders before the auction begins. We will try to provide an audio/visual transmission outside the hall for your convenience.

10. All oral bidders are required to register. Registration for oral bidding will begin at 8 a.m. PDT on the day of the sale and will end at 10 a.m. PDT. You may pre-register by mail or fax by completing the form located in the sale folder and also available at the BLM LVFO.

11. Prior to receiving a bidder number on the day of the sale, all registered bidders must submit a certified check, bank draft, or cashier's check in the amount of $10,000. The check must list as individual (and not joint) payees both the Bureau of Land Management and your name or company name separated by the word "or". On the day of the sale, pre-registered bidders may go to the Express Registration Desk, present a Photo Identification Card, the required $10,000 check, and receive a bidder number. All other bidders must go to the standard Registration Line where additional information will be requested along with your Photo Identification Card and the required $10,000 check. Upon completion of registration you will be given a bidder number. If you are a successful bidder, the $10,000 will be applied to your required 20% deposit. For parcels N–75200 and N–77125, arrangements may be made for Electronic Fund Transfer (EFT) of the 20% deposit by notifying BLM no later than May 14, 2004 of your intent to use EFT.

12. If you purchase one or more parcels and default on any single parcel, the default will be against all of your parcels. BLM will retain your $10,000 and the sale of *all* parcels to you will be cancelled. Following the auction, checks will be returned to the unsuccessful bidders upon presentation of Photo Identification at the Registration Area.

13. The highest qualifying bid for any parcel, whether sealed or oral, will be declared the high bid. The apparent high bidder, if an oral bidder, must submit the full deposit amount by 4:30 p.m. PDT on the day of the sale in the form of cash, personal check, bank draft, cashiers check, money order or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount of the successful bid. If not paid by close of the auction, funds must be delivered no later than 4:30 p.m. PDT the day of the sale to the BLM Collection Officers at Sam's Town Live.

14. The remainder of the full bid price, whether sealed or oral, must be paid within 180 calendar days of the competitive sale date in the form of a certified check, money order, bank draft, or cashier's check made payable to the Bureau of Land Management. *Personal checks will no longer be accepted.* Arrangements for Electronic Fund Transfer (EFT) to BLM for the balance which is due on or before November 29, 2004, should be made a minimum of two weeks prior to the date you wish to make payment. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM.

15. Parcels N–75200 and N–77125 will only be put up for sale at the oral auction. Sealed bids for these parcels will not be accepted. If these parcels are not sold at the oral auction, they will *not* be sold on the Online Internet Auction.

16. Oral bids will be considered only if received at the place of sale and made at least for the FMV as determined by the authorized officer. For parcels designated Serial Numbers N–75200 and N–77125 specifically, each prospective bidder will be required to present a certified check, postal money order, bank draft or cashier's check made payable to the order of (individually and not jointly) the Bureau of Land Management or (Insert your name or company name here.) for an amount of money which shall be no less than 20% of the federally approved FMV of the designated parcels, Serial Numbers N–75200 and N–77125, in order to be eligible to bid on each respective parcel. In order to bid on both designated parcels listed, a separate certified check, postal money order, bank draft or cashier's check for an amount of money which shall be no less than 20% of the federally approved FMV for each designated parcel will be required. The check(s) must list both the Bureau of Land Management and your name or company name separated by the word "or".

17. Federal law requires bidders to be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State Instrumentality, or political subdivision authorized to hold property, or an entity including, but not limited to, associations or partnerships capable of holding property or interests therein under the laws of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit.

18. In order to determine the value, through appraisal, of the parcels of land proposed to be sold, certain extraordinary assumptions may have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this NORA, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable local government policies, laws, and regulations that would affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or projected use of nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals will be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

19. *Additional Information:* The BLM may accept or reject any or all offers, or withdraw any parcel of land or interest therein from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws or are determined to not be in the public interest.

If not sold, any parcel described above in this Notice may be identified for sale at a later date without further legal notice. Unsold parcels, with the exception of parcels N–75200 and N–77125, may be put up for sale on the Internet. Internet auction procedures will be available at *http://www.auctionrp.com.* If unsold on the Internet, parcels may be put up for sale at future auctions without additional legal notice. Upon publication of this notice and until the completion of the sale, the BLM is no longer accepting land use applications affecting any parcel identified for sale, including parcels that have been published in a previous Notice of Realty Action. However, land use applications may be considered after completion of the sale for parcels that are not sold through sealed, oral, or online Internet auction procedures provided the authorization

will not adversely affect the marketability or value of the parcel.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, CERCLA and other environmental documents is available for review at the BLM LVFO, or by calling (702) 515–5114. This information will also be available on the Internet at *http://propertydisposal.gsa.gov*. Click on NV for Nevada. It will also be available on the Internet at *http://www.nv.blm.gov*. Click on Southern Nevada Public Land Management Act and go to Land Sales.

Public Comments

The general public and interested parties may submit comments regarding the proposed sale and purchase to the Field Manager, BLM LVFO, up to 45 days after publication of this Notice in the **Federal Register**. Any adverse comments will be reviewed by the Nevada BLM State Director, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior. Any comments received during this process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish to have your name and/or address made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A request from a commentor to have their name and/or address withheld from public release will be honored to the extent permissible by law. Anonymous comments will not be accepted.

Termination of R&PP Classification—SNPLMA Withdrawal

Additionally, the following leases granted under the Recreation and Public Purposes (R&PP) Act, 43 U.S.C. 869 *et seq.*) have been relinquished: N–37113 (98FR5515), N–63113 (64FR50527–50528), and N–66077 (65FR3245–3246). This Notice officially terminates the R&PP classification and segregation of the parcels that were subject to these leases, but does not serve as an opening order because those parcels are within the disposal boundary set by Congress in SNPLMA. Pursuant to Section 4(c) of SNPLMA, these parcels are withdrawn, subject to valid existing rights, from entry and appropriation under the public land laws, location and entry under the mining laws and from operation under the mineral leasing and geothermal leasing laws, until such time as the Secretary of Interior terminates the withdrawal or the lands are patented. (Authority: 43 CFR 2711.1–2(d))

Dated: March 8, 2004.

Mark T Morse,

Field Manager.

[FR Doc. 04–7843 Filed 4–2–04; 10:21 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: MMS prepares SEAs and FONSIs for proposals that relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

This listing includes all proposals for which the Gulf of Mexico OCS Region prepared a FONSI in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Newfield Exploration Company, Initial Exploration Plan, SEA No. N–7852.	High Island, Block A–353, Lease OCS–G 24425, located 111 miles from the nearest Louisiana shoreline.	10/29/03
Arena Offshore, LLC, Initial Exploration Plan, SEA No. N–7940	High Island, Block A–366, Lease OCS–G 24429, located 100 miles from the nearest Texas shoreline.	11/24/03
Dominion Exploration & Production, Inc., Initial Exploration Plan, SEA No. N–7928.	DeSoto Canyon, Block 618, located 90 miles from the nearest Louisiana shoreline.	11/25/03
CGG Americas, Inc., Geological & Geophysical Exploration for Mineral Resources, SEA No. L03–62.	Located in the central Gulf of Mexico south of Mobile, Alabama	10/01/03
Kerr-McGee Oil & Gas Corporation, Structure Removal Activity, SEA No. ES/SR 03–188.	Main Pass, Block 107, Lease OCS–G 07804, located 35 miles from the nearest Louisiana shoreline.	10/06/03
Veritas DGC Corporation, Geological & Geophysical Exploration Plan, SEA No. T03–19.	Located in the western Gulf of Mexico south of Galveston, Texas.	10/09/03
Fugro Geoteam, Geological & Geophysical Exploration Plan, SEA No. T03–20.	Located in the central and western Gulf of Mexico south of Galveston, Texas, and Grand Isle, Louisiana.	10/09/03
BP Exploration & Production, Inc., Geological and Geophysical Exploration Plan, SEA No. L03–59.	Located in the central Gulf of Mexico south of Fourchon, Louisiana.	10/14/03

Activity/Operator	Location	Date
William G. Helis Company, Structure Removal Activity, SEA No. ES/SR 03–189.	South Timbalier, Block 198, Lease OCS–G 07769, located 45 miles from the nearest Louisiana shoreline.	10/21/03
The Louisiana Land and Exploration Company, Structure Removal Activity, SEA No. ES/SR 03–196.	West Cameron (South), Block 619, Lease OCS–G 02233, located 110 miles from the nearest Louisiana shoreline.	10/29/03
Merit Energy Company, Structure Removal Activity, SEA No. ES/SR 03–197.	Brazos Area, Block 517, Lease OCS–G 11279, located 10 miles from the nearest Texas shoreline.	11/18/03
BP Exploration and Production Company, Structure Removal Activity, SEA No. ER/SR 03–199 and 03–200.	Eugene Island (South Addition), Block 322, Lease OCS–G 02113, located 58 miles southwest from the nearest Terrebonne Parish, Louisiana shoreline.	11/13/03
El Paso Production GOM, Inc., Structure Removal Activity, SEA No. ES/SR 03–201.	East Cameron, Block 36, Lease OCS–G 17835, located 5 miles from the nearest Louisiana shoreline.	11/13/03
C & C Technologies, Inc., Geological and Geophysical Exploration Plan, SEA No. L03–68.	Located in the western Gulf of Mexico south of Fourchon, Louisiana.	11/13/03
Union Oil Company of California, Structure Removal Activity, SEA Nos. ES/SR 03–190, 03–191, 03–192, 03–193, 03–194 and 03–195.	West Cameron, Block 278; High Island, BlockA9; Vermilion, Block 27 and Vermilion (South Addition), Blocks 330 and 262; Leases OCS–G 19711, 09093, 04208, 04261 and 02081 respectively, located 4.5 to 107 miles from the nearest Louisiana shoreline and 35 to 110 miles from the nearest Texas shoreline.	11/19/03
Marathon Oil Company, Structure Removal Activity, SEA No. ES/SR 03–161.	South Pass, Block 89, Lease OCS–G 01618, located 14 miles from the nearest Louisiana shoreline.	12/11/03
BP Exploration & Production Company, Structure Removal Activity, SEA No. ES/SR 03–202.	South Marsh Island (South Addition), Block 205, Lease OCS–G 05475, located 95 miles from the nearest Louisiana shoreline.	12/02/03
WesternGeco for Multi-Client, Geological & Geophysical Exploration fo Mineral Resources, SEA No. L03–69.	Located in the central Gulf of Mexico east of Galveston, Texas	12/02/03
Fugro Geoservices, Inc. for Kerr-McGee Corporation, Geological & Geophysical Exploration for Mineral Resources, SEA No. L03–70.	Located in the central Gulf of Mexico south of Patterson, Louisiana.	12/04/03
GX Technology Corporation for Lico International, Inc., Geological & Geophysical Exploration for Mineral Resources, SEA No. L03–71.	Located in the central and western Gulf of Mexico east of Galveston, Texas.	12/12/03
C & C Technologies, Inc. for Chevron Texaco, Geological & Geophysical Exploration for Mineral Resources, SEA No. L03–72.	Located in the central Gulf of Mexico south of Fourchon, Louisiana.	12/15/03
WesternGeco for Chevron Texaco, Geological & Geophysical Exploration for Mineral Resources, SEA No. L03–73.	Located in the central Gulf of Mexico east of Galveston, Tex	12/18/03
EOG Resources, Inc., Structure Removal Activity, SEA No. ES/SR 03–001S.	Ewing Bank, Block 827, Lease OCS–G 18165, located 62 miles south of the nearest Louisiana shoreline.	12/16/03
Houston Exploration Company, Structure Removal Activity, SEA No. ES/SR 03–203.	Vermillion Area, Block 203, Lease OCS–G 12871, located 55 miles from the nearest Louisiana shoreline.	12/23/03
Houston Exploration Company, Structure Removal Activity, SEA No. ES/SR 03–204.	Galveston Area, Block 144, Lease OCS–G 17119, located 10 miles from the nearest Texas shoreline.	12/23/03
Anadarko E & P Company, LP, Structure Removal Activity, SEA Nos. ES/SR 03–205 and 03–206.	South Marsh Island (North Addition), Block 282, Lease OCS–G 12904, located 27 miles from the nearest Louisiana shoreline; Ship Shoal, Block 128, Lease OCS–G 08707, located 37 miles from the nearest Louisiana shoreline.	12/22/03
J. M. Huber Corion, Structure Removal Activity, SEA Nos. 03–207, 03–208 and 03–209.	South Timbalier, Block 28, Lease OCS–G 01362, located 7 miles from the nearest Louisiana shoreline.	12/22/03
WesternGego, Geological Geophysical Exploration for Mineral Resources, SEA No. L03–74.	Located in the central Gulf of Mexico east of Galveston, Texas	12/23/03

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: January 12, 2004.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 04–7767 Filed 4–5–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Gulf of Mexico, Outer Continental Shelf, Western Planning Area, Oil and Gas Lease Sale 192 (2004) Environmental Assessment

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: The Minerals Management Service (MMS) has prepared an environmental assessment (EA) for proposed Gulf of Mexico Outer Continental Shelf (OCS) Western Planning Area (WPA) Lease Sale 192. In this EA, MMS reexamined the potential environmental effects of the proposed action and its alternatives based on any new information regarding potential impacts and issues that were not available at the time the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2003–2007, Central Planning Area Sales 185, 190, 194, 198, and 201, and Western Planning Area Sales 187, 192, 196, and 200, Final Environmental Impact Statement, Volumes I and II* (Multisale EIS) was completed in November 2002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana

70123–2394, Mr. Joseph Christopher, telephone (504) 736–2774.

SUPPLEMENTARY INFORMATION: Proposed WPA Lease Sale 192 is the third WPA lease sale scheduled in the *Outer Continental Shelf Oil and Gas Leasing Program: 2002–2007* (5–Year Program). The Multisale EIS analyzed the effects of a typical lease sale by presenting a set of ranges for resource estimates, project exploration and development activities, and impact-producing factors for any of the proposed WPA lease sales. The level of activities projected for proposed Lease Sale 192 falls within these ranges. No new significant impacts were identified for proposed Lease Sale 192 that were not already assessed in the Multisale EIS. As a result, MMS determined that a supplemental EIS is not required and prepared a Finding of No New Significant Impact.

EA Availability

To obtain a copy of the EA, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). You may also view the EA on the MMS Web site at *http://www.gomr.mms.gov*.

Dated: January 21, 2004.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 04–7768 Filed 4–5–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of Restricted Joint Bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period May 1, 2004, through October 31, 2004. The List of Restricted Joint Bidders published in the **Federal Register** October 10, 2003, covered the period November 1, 2003, through April 30, 2004.

Group I. ExxonMobil Corporation
ExxonMobil Exploration Company

Group II. Shell Oil Company
Shell Offshore Inc.
SWEPI LP
Shell Frontier Oil & Gas Inc.
Shell Consolidated Energy Resources Inc.
Shell Land & Energy Company
Shell Onshore Ventures Inc.
Shell Offshore Properties and Capital II, Inc.
Shell Rocky Mountain Production LLC
Shell Gulf of Mexico Inc.

Group III. BP America Production Company
BP Exploration & Production Inc.
BP Exploration (Alaska) Inc.

Group IV. TOTAL E&P USA, Inc.

Group V. ChevronTexaco Corporation
Chevron U.S.A. Inc.
Texaco Inc.
Texaco Exploration and Production Inc.

Group VI. ConocoPhillips Company

Dated: March 22, 2004.

R. M. "Johnnie" Burton,

Director.

[FR Doc. 04–7770 Filed 4–5–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf Official Protraction Diagrams

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of new North American Datum of 1983 (NAD 83) Outer Continental Shelf Official Protraction Diagrams.

SUMMARY: Notice is hereby given that effective with this publication, the following NAD 83-based Outer Continental Shelf Official Protraction Diagrams last revised on the date indicated are the latest documents available. These diagrams are on file and available for information only, in the Alaska OCS Regional Office, Anchorage, Alaska. In accordance with Title 43, Code of Federal Regulations, these diagrams are the basic record for the description of mineral and oil and gas lease sales in the geographic areas they represent.

Description	Date
NM01–03 Kanaga Basin	03–JUN–2003
NM01–04 (Unnamed)	03–JUN–2003
NM01–05 (Unnamed)	03–JUN–2003
NM01–06 (Unnamed)	03–JUN–2003
NM02–02 Maury Deep	03–JUN–2003
NM02–03 (Unnamed)	03–JUN–2003
NM02–04 (Unnamed)	03–JUN–2003
NM02–05 (Unnamed)	03–JUN–2003
NM03–01 (Unnamed)	03–JUN–2003
NM59–02 (Unnamed)	03–JUN–2003
NM59–04 (Unnamed)	03–JUN–2003
NM60–01 Murray Canyon ..	03–JUN–2003
NM60–03 (Unnamed)	03–JUN–2003
NM60–04 (Unnamed)	03–JUN–2003
NM60–06 (Unnamed)	03–JUN–2003
NN01–03 Bowers Ridge	03–JUN–2003
NN01–04 Bowers Seamount	03–JUN–2003
NN01–05 Pochnoi Trough	03–JUN–2003
NN01–06 Korovin Canyon	03–JUN–2003
NN02–01 Pribilof Canyon West	03–JUN–2003
NN02–02 Pribilof Canyon ..	03–JUN–2003
NN02–03 Chagulak Canyon	03–JUN–2003
NN02–05 Amlia Knoll	03–JUN–2003
NN03–01 Akutan North	03–JUN–2003
NN03–07 (Unnamed)	03–JUN–2003
NN03–08 Aleutian Trench ..	03–JUN–2003
NN04–04 Shumagin Bank	03–JUN–2003
NN04–05 Derickson Seamount	03–JUN–2003
NN04–06 Walls Knoll	03–JUN–2003
NN04–07 Sirius Seamount	03–JUN–2003
NN05–02 (Unnamed)	03–JUN–2003
NN05–03 Chirikof Seamount	03–JUN–2003
NN05–05 (Unnamed)	03–JUN–2003
NN08–01 Baker Fan	03–JUN–2003
NN60–03 Ulm Plateau	03–JUN–2003
NN60–04 Bowers Bank	03–JUN–2003
NN60–05 (Unnamed)	03–JUN–2003
NN60–06 Rude Canyon	03–JUN–2003
NO01–02 Pervenets Canyon East	03–JUN–2003
NO01–04 Zhemchug Spur	03–JUN–2003
NO02–01 St. Matthew South	03–JUN–2003
NO02–02 Cape Mendenhall West	03–JUN–2003
NO02–03 Bering Sea	03–JUN–2003
NO02–04 St. Paul North	03–JUN–2003
NO02–05 St. Paul Spur	03–JUN–2003
NO02–07 St. George Canyon	03–JUN–2003
NO03–03 Cape Newenham West	03–JUN–2003
NO03–05 St. Paul East	03–JUN–2003
NO03–06 Bristol Bay North	03–JUN–2003
NO03–07 St. George East	03–JUN–2003
NO03–08 Bristol Bay	03–JUN–2003
NO04–05 Ugashik West	03–JUN–2003
NO05–08 Albatross Bank ..	03–JUN–2003
NO06–03 Portlock Bank	03–JUN–2003
NO06–04 Dall Seamount ...	03–JUN–2003
NO06–05 Kodiak East	03–JUN–2003
NO06–06 Surveyor Seachannel	03–JUN–2003
NO06–07 (Unnamed)	03–JUN–2003
NO07–03 Icy Bay South	03–JUN–2003
NO07–05 (Unnamed)	03–JUN–2003
NO07–06 (Unnamed)	03–JUN–2003
NO07–08 (Unnamed)	03–JUN–2003
NP01–08 St. Matthew West	03–JUN–2003
NP02–03 Gambell South ...	03–JUN–2003
NP02–05 St. Matthew North	03–JUN–2003
NP02–06 Hooper Bay West	03–JUN–2003
NP02–08 Nunivak Island West	03–JUN–2003
NP03–01 Norton Sound	03–JUN–2003

FOR FURTHER INFORMATION CONTACT: Copies of Official Protraction Diagrams may be purchased for $2.00 each from the Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Room 300, Anchorage, Alaska 99508–4363, Attention: Library, (907) 271–6438.

SUPPLEMENTARY INFORMATION: Official Protraction Diagrams may be obtained in two digital formats: .gra files for use in ARC/INFO and .pdf files for viewing and printing in Acrobat. Copies are also available for download at: *http://www.mms.gov/ld/alaska.html.*

Dated: February 23, 2004.

Thomas A. Readinger,

Associate Director for Offshore, Minerals Management.

[FR Doc. 04–7769 Filed 4–5–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigations

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Analysis of Law Enforcement Officers Killed or Assaulted.

The Department of Justice (DOJ), Federal Bureau of Investigations (FBI) 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 FR Volume 69, Number 6, on page 1604 on January 9, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 6, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the 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:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Analysis Law Enforcement Officers Killed or Assaulted.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1–701. Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local Law Enforcement Agencies. This report will gather specific incident data related to Law Enforcement Officers killed or assaulted in the line of duty. The resulting data is published annually.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 305 law enforcement agency respondents, who will complete the report within 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 305 annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW, Washington, DC 20530.

Dated: March 31, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, PRA, Department of Justice

[FR Doc. 04–7735 Filed 4–5–04; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Law Enforcement Officers Killed or Assaulted.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 6, page 1604 on January 9, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 6, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the 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:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Law Enforcement Officers Killed or Assaulted.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1–705. Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local Law Enforcement Agencies. This report will gather specific incident data related to Law Enforcement Officers killed or assaulted in the line of duty. The resulting data published annually.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 17,324 law enforcement agency respondents at 7 minutes per report.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 24,115 annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: March 31, 2004.

Brenda E. Dyer,

Department Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 04–7736 Filed 4–5–04; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Bureau of International Labor Affairs; U.S. National Administrative Office; National Advisory Committee for the North American Agreement on Labor Cooperation; Notice of Open Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of open meeting May 4, 2004.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. National Administrative Office (NAO) gives notice of a meeting of the National Advisory Committee for the North American Agreement on Labor Cooperation (NAALC).

The Committee was established by the Secretary of Labor to provide advice to the U.S. Department of Labor on matters pertaining to the implementation and further elaboration of the NAALC, the labor supplemental accord to the North American Free Trade Agreement (NAFTA). The Committee is authorized under Article 17 of the NAALC.

The Committee consists of independent representatives drawn from among labor organizations, business and industry, educational institutions, and the general public.

DATES: The Committee will meet on May 4, 2004 from 9 a.m. to 1 p.m.

ADDRESSES: U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4325, Washington, DC 20210. The meeting is open to the public on a first-come, first served basis.

FOR FURTHER INFORMATION CONTACT: Lewis Karesh, designated Federal Officer, U.S. NAO, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–5205, Washington, DC 20210. Telephone (202) 693–4900 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Please refer to the notice published in the **Federal Register** on December 15, 1994 (59 FR 64713) for supplementary information.

Signed at Washington, DC on April 1, 2004.

Lewis Jaresh, Acting Director,

U.S. National Administrative Officer.

[FR Doc. 04–7742 Filed 4–05–04; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,098]

Cibola, Hickory, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 29, 2004, in response to a petition filed on behalf of workers at Cibola, Hickory, North Carolina.

The Department has been unable to locate the company official for the subject group or to obtain the information necessary to reach a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 26th day of March, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7749 Filed 4–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,753]

Citation Corp., Camden, TN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Citation Corporation, Camden, Tennessee. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–53,753; Citation Corporation, Camden, Tennessee (March 17, 2004).

Signed at Washington, DC, this 30th day of March, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–7751 Filed 4–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,561]

Consolidated Screw & Machining, Gaston, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 22, 2004 in response to petition filed on behalf of workers at Consolidated Screw & Machining, Gaston, Oregon.

All workers were separated from the subject firm more that one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 26th day of March, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7744 Filed 4–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,435]

International Steel Group (ISG), Steelton, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 8, 2004, in response to a petition filed by the United Steel Workers of America, Local Union 1688 on behalf of workers at International Steel Group (ISG), Steelton, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 25th day of March, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7745 Filed 4–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,411]

Knowles Electronics, Itasca, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 3, 2004, in response to a petition filed by a company official on behalf of workers at Knowles Electronics, Itasca, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 25th day of March, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7747 Filed 4–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) number and alternative trade adjustment assistance (ATAA) by (TA-W) number issued during the periods of February and March 2004.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–54,260; New Era Die Company, Red Lion, PA
TA–W–54,208; Davidson Industries, Inc., Mapleton, OR
TA–W–54,082; Fountain Construction Co., Inc., Assembly Board Tooling Div., Jackson, MS
TA–W–54,042; R. Sabee Company LLC, Appleton, WI
TA–W–54,053; Quality Fabricating, Inc., North Huntington, PA
TA–W–53,993; Newell Rubbermaid, Inc., Wooster, OH
TA–W–54,002; ASTI, Inc., Transaction Printer Group, Inc., Riverton, WY
TA–W–53,999; Collins & Aikman, Carpet and Acoustics Div., Greenville, SC
TA–W–54,005; Vermont Fasteners Manufacturing, Div. of IFC U.S.A. Corp., Swanton, VT
TA–W–53,932; Corex Products, Inc., Springfield, MA
TA–W–54,272; Tweave, Inc., Norton, MA
TA–W–54,028; Means Industries, Inc., Vassar Plant, a subsidiary of Amsted Industries, Vassar, MI
TA–W–53,962; Wagner Plastics, Inc., Clinton, MA
TA–W–54,387; Shapiro Packing Co., Inc., August, GA
TA–W–54,248; K S Bearings, Inc., Greensburg, IN
TA–W–54,128; Precision Disc Corp., Knoxville, TN
TA–W–54,183; Northland Cranberries, Inc., Jackson Plant, Jackson, WI
TA–W–54,140; Ashton Photo Co., including leased workers from Personnel Source, Salem, OR
TA–W–54,222; Rohm and Haas Co., Elma, WA
TA–W–54,106; Susan Mills, Inc., Hillside, NJ
TA–W–54,094; Solvay Solexis, Inc., Orange, TX
TA–W–54,097; JII Promotions, Inc., a subsidiary of Jordan Industries, Inc., Coshocton, OH
TA–W–54,111; PCD Camcar Textron, Rockford, IL
TA–W–54,243; Tateishi of America, Inc., Pineville, NC
TA–W–54,105; Creative Pultrusions, Roswell, NM
TA–W–54,075; Unilever Home and Personal Care, Cartersville, GA
TA–W–54,085; Franklin Industries, Franklin, PA
TA–W–54,229 & A; Deluxe Global Media Services, LLC, a subsidiary of Deluxe Media Services, Inc., DVD Replication Facility, Carson, CA and Ontario, CA
TA–W–53,992; Twin City Leather Co., Inc., Gloversville, NY
TA–W–54,079; Kaddis Manufacturing Corp., Parsons, TN
TA–W–54,115 & A; California Amplifier, Inc., KTI Division, Richland Center, WI and Components Div., Spring Green, WI
TA–W–54,221; Greif Brothers Service Corp., Industrial Packaging and Services Div., Kingsport, TN
TA–W–52,861; Intermet, Radford Foundry, Radford, VA
TA–W–54,055; Entek International LLC, Lebanon, OR
TA–W–54,035; Hi-Country Foods Corp., Selah, WA
TA–W–54,018; Tyco Plastics, a subsidiary of Tyco International, Ltd, Fairmont, MN
TA–W–54,014; Bager Equipment Co., Winona, MN
TA–W–54,176; Malamute Enterprises, Inc., Fishing Vessel (F/V) Malamute Kid, Homer, AK
TA–W–54,064; RMG Foundry LLC, Mishawaka, IN
TA–W–53,978; Academy Die Casting and Plating Co., Inc., Edison, NJ
TA–W–54,217; J.S. Technos Corp., a subsidiary of Robert Bosch Corp., including leased workers from Quality Personnel, Russellville, KY
TA–W–54,142; Jac Pac Foods, a subsidiary of Tyson Prepared Foods, Inc., a subsidiary of Tyson Foods, Inc., Manchester, NH
TA–W–52,861; Intermet, Radford Foundry, Radford, VA
TA–W–54,081; The Toro Co., including leased workers of Ablest & Adecco, Oxford, MS: "All workers engaged in employment related to the assembly of 2 cycle engines are denied eligibility to apply for adjustment assistance."

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–54,089; Sun Microsystems, Austin, TX
TA–W–54,337; Owens Brockway, a/k/a Owens Illinois, Antioch, CA
TA–W–54,256; Aastra Telecom U.S., Inc., Aastra Technologies Limited, Lynchburg, VA
TA–W–54,300; Hewlett-Packard Co., Houston, TX
TA–W–54,311; Interconex, Inc., d/b/a Interdean.Interconex, Danbury, CT
TA–W–54,309; Big Bear Plus #254, a subsidiary of The Penn Traffic Co., Portsmouth, OH
TA–W–54,338; Loftin Black Furniture Co., Thomasville, NC
TA–W–54,125; Ingersol-Rand Co., Air Solutions/OEM Systems Div., Davidson, NC
TA–W–54,235; Electronic Data Systems Corp., Kokomo, IN
TA–W–54,171; Chromalox, Inc., Vernon, AL
TA–W–54,213; Broad Street Bonded Warehouse, Inc., Gastonia, NC
TA–W–54,071; BGE, Ltd, Div. of The Bradford Group, Niles, IL
TA–W–54,280; Baptist Regional Medical Center, Corbin, KY
TA–W–54,185; CMD3D, LLC, Saco, ME
TA–W–54,392; Safelite Group, Inc., a subsidiary of Safelite Glass Corp., Great Falls, MT
TA–W–54,263; Blue Mountain, Olney Wallcovering, Spartanburg, SC
TA–W–54,191; Hewlett Packard Co., Atlanta, GA
TA–W–54,228; Bangor Hydro Electric Co., a div. of Emera, Inc., Bangor, ME
TA–W–54,298; Accenture LLP, Houston, TX
TA–W–54,154; Emerson Process Management, Performance Solutions Div., Austin, TX

The investigation revealed that criterion (a)(2)(A)(I.A) (no employment decline) has not been met.

TA–W–54,100; American Safety Razor Co., Verona, VA
TA–W–54,323; Andover Wood Products, a subsidiary of Ethan Allen, Inc., Andover, ME
TA–W–54,169; IBM Global Services, Application Management Services, Essex Junction, VT
TA–W–54,205; Westling Manufacturing Co., including leased workers of ASAP Employment Services, Princeton, MN

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–54,073; Crews Manufacturing/ Uptex, K.C. Holdings, The Rock, GA

The investigation revealed that criteria (a)(2)(A)(I.B) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (has shifted production to a county not under the free trade agreement with U.S.) have not been met.

TA–W–54,194; Dana Corp., Perfect Circle Div., Manchester, MO

The investigation revealed that criteria (a)(2)(A)(I.B) (Sales or production, or both, did not decline) and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

TA–W–54,039; Ehlert Tool Co., New Berlin, WI

The investigation revealed that criteria (a)(2)(A)(I.C) (increased imports) and (a)(2)(B)(II.B) (has shifted production to country not under the free trade agreement with U.S)) have not been met.

TA–W–54,117; Milliken & Co., Saluda Plant, Saluda, SC

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–54,179; Sea Gull Lighting Products, Inc., Philadelphia, PA: January 28, 2003.

TA–W–54,056; Stanley Services, Workers at Harriet and Henderson Yarns, Harriet 1, Henderson, NC: January 23, 2003.

TA–W–53,033; Aluminum Color Industries, Inc., Lowellville, OH: January 14, 2003.

TA–W–54,025; Columbia Showcase and Cabinet Co., Inc., Sun Valley, CA: December 22, 2002.

TA–W–54,210; Flynt Fabrics, Inc., Graham, NC: August 9, 2003.

TA–W–54,329; Diefendorf Gear, LLC, Syracuse, NY: February 11, 2003.

TA–W–54,143; Elizabeth Weaving, Inc., Grover, NC: January 21, 2003.

TA–W–54,023; J & J Knitting, Ridgewood, NY: January 8, 2003.

TA–W–54,180; Michels South Carolina, d/b/a Pilliod Furniture, Nichols, SC: February 2, 2003.

TA–W–54,347; Gold Star Coatings, Arden, NC: February 11, 2003.

TA–W–54,051; Ferriot, Inc., Mold Building Div., Akron, OH: January 20, 2003.

TA–W–54,383; Hewlett Packard, Workers at Agere Systems, Inc., Allentown, PA: February 19, 2003.

TA–W–54,198; Rockwell Automation, ACIG Div., Dublin, GA: February 3, 2003

TA–W–54,359; Koo's Manufacturing, Inc., South Gate, CA: December 4, 2002.

TA–W–54,299; H.I. Apparel Cutting, Inc., Clinton, NC: February 13, 2003.

TA–W–54,245; S&D Hosiery, Locust, NC: February 5, 2003.

TA–W–54,278; Cochrane Furniture Co., Upholstery Div., Lincolnton, NC: February 6, 2003

TA–W–54,199 & A; Kincaid Furniture Co., Inc., Plant 1, Hudson, NC and Plant 6, Hudson, NC: January 9, 2003.

TA–W–53,888; Artesyn Technologies, Redwood Falls, MN: December 13, 2003.

TA–W–54,182; Flexsys America LP, Nitro Plant, Nitro, WV: February 6, 2003.

TA–W–53,913 & A; Smead Manufacturing, Hastings Facility, Hastings, MN and River Falls Facility, River Falls, WI: December 22, 2002.

TA–W–54,090; Plaid Clothing, Erlanger, KY: January 27, 2003.

TA–W–54,120; Packard-Hughes Interconnect, d/b/a Delphi Mechatronic Systems, Foley Operations, a subsidiary of Delphi Packard electric, a div. of The Delphi Corp., Foley, AL: January 28, 2003.

TA–W–54,114 & A, B, C; The Boeing Co., Commercial Aircraft Group, Puget Sound Region, WA, Portland, OR, Wichita, KS and Triumph Group, Inc. (formerly The Boeing Co), Spokane, WA: March 19, 2004.

TA–W–54,096; Aelco Foundries, Inc., First Odyssey, Milwaukee, WI: January 28, 2003.

TA–W–54,003; MDF Moulding and Millwork, Idabel, OK: January 12, 2003.

TA–W–54,220; National Textiles, Galax, VA: February 5, 2003.

TA–W–54,287; Masonite Corp., Danville Components, a subsidiary of Masonite International Corp., including leased workers of Adecco Employment Services, Ameristaff Companies, Inc., and Debbie's Staffing Services, Danville, VA: February 12, 2003.

TA–W–54,031; Del Monte, Inc., Plant No. 122, Canned Asparagus Operations, a div. of Del Monte Foods, Inc., Toppenish, WA: January 15, 2003.

TA–W–54,013; Sappi Cloquet LLC, d/b/a Sappi Fine Paper North America, formerly known as Potlatch Corp., Cloquet, MN: February 28, 2003.

TA–W–54,021; Honeywell International, Specialty Films Div., including leased workers of Manpower, Pottsville, PA: January 14, 2003.

TA–W–54,037; Micro Med Machining, d/b/a UTI Corp., Miramar, FL: January 12, 2003.

TA–W–54,040; Wohlert Special Products Co., Sault Ste. Marie, MI: January 14, 2003.

TA–W–54,092; Gerber Plumbing Fixtures, LLC, Gadsden, AL: January 22, 2003.

TA–W–54,121; Coach Leatherware Corp., Carlstadt, NJ: January 22, 2003.

TA–W–54,149; Schott Scientific Glass, Inc., Parkersburg, WV: February 2, 2003.

TA–W–54,264; Comeaux Marketing, Inc., St. Amant, LA: February 9, 2003.

TA–W–54,289; Regal Beloit Corp., Motor Technologies Group, Leeson Electric, Saukville, WI: February 17, 2003.

TA–W–54,060; MI Home Products, Window and Door Div., Elizabethville, PA: January 2, 2003.

TA–W–53,291 & A, B; Cone Mills Corp., Carlisle Plant Div., Carlisle, SC, Cone Rutherford County, LLC Div., Cliffside, NC and Cone White Oak, LLC Div., Greensboro, NC: October 14, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–54,226; Plastic Research and Development, a subsidiary of EBSCO Industries, Inc., Mulberry, AR: February 4, 2003.

TA–W–54,225; PRADCO Outdoor Brand, a subsidiary of EBSCO Industries, Inc., Hot Springs, AR: February 4, 2003.

TA–W–54,181; Oxford Industries, Cutting Department, Gaffney, SC: February 4, 2003.

TA–W–54,262; Fluidmaster, Inc., San Juan Capistrano, CA: February 2, 2003.

TA–W–54,195; Tyco Valves & Controls N.A., Foundry, Prophetstown, IL: February 4, 2002.

TA–W–54,004; Medline Industries, d/b/a Maxxim Medical, Inc., Maxxim Boundary, including leased workers of Kelly Services, Columbus, MS: December 18, 2002.

TA–W–53,985; Vishay BLH, Inc., a div. of Vishay Intertechnology, Inc., Canton, MA: January 8, 2003.

TA–W–54,277; S & R Products, LLC, d/b/a Summit Sportswear, Santa Ana, CA: February 13, 2003.

TA–W–54,257; MCS Industries, Inc., including leased workers of Adecco Personnel, Allied Personnel Services and Job Connection, Easton, PA: February 10, 2003.

TA–W–54,159; Advanced Modeling & Consulting, Inc., Fairview, PA: February 3, 2003.

TA–W–54,081; The Toro Co., including leased workers of Ablest and Adecco, Oxford, MS: January 12, 2003.

TA–W–54,318; SCI Technology, Inc., Enclosure Div., a subsidiary of Sanmina-SCI, Richmond, KY: February 19, 2003.

TA–W–54,382; Inter Metro Industries Corp., and lease workers of Select Personnel, Cucamonga, CA: February 27, 2003.

TA–W–54,230; Henlopen Manufacturing Co., Melville, NY: January 23, 2003.
TA–W–54,167; Quest, Inc., Roswell, NM: January 23, 2003.
TA–W–54,401; G.S.W. Manufacturing, Inc., Findlay, OH: March 1, 2003.
TA–W–54,356; E–Z–EM Caribe, Inc., San Lorenzo, PR: February 5, 2003.
TA–W–54,238; Saylor Industries, Inc., Johnstown, PA: February 4, 2003.
TA–W–54,130; Kvaerner Oilfield Products, Inc., a subsidiary of Aker Kvaerner AS, Houston, TX: January 20, 2003.
TA–W–54,270; Tellabs Operations, Inc., Naperville, IL: February 12, 2003.
TA–W–54,249; VF Jeanswear Limited Partnership, a subsidiary of VF Corp., Irvington, AL: February 12, 2003.
TA–W–54,164; Maida Development Co., including leased workers of Integrity Staffing Services, Hampton, VA: January 28, 2003.
TA–W–54,155; Wyeth Nutritional, a div. of Wyeth Pharmaceuticals, including leased workers of Kelly Services, Georgia, VT: February 2, 2003.
TA–W–54,206; Bird Machine, a subsidiary of Baker Hushes, Inc., South Walpole, MA: January 28, 2003.
TA–W–54,147; Metso Minerals Industries, Inc., Colorado Springs, CO: February 2, 2003.
TA–W–54,261; Alkahn Labels, Inc., Jac-Arts Div., Cochran, GA: January 19, 2003.
TA–W–54,297; Johnson Controls, Inc., Automotive Systems Group, Dayton, NJ: February 17, 2003.
TA–W–54,158; Bestt Liebco Corp., Fond du Lac, WI: February 3, 2003.
TA–W–54,258; Just-A-Stretch of R.I., Inc., Hope, RI: February 11, 2003.
TA–W–54,321 and A; Shorewood Packaging, Clifton, NJ and Teaneck, NJ: February 19, 2003.
TA–W–54,187; ABB, Inc., Instrumentation Div., Warminster, PA: February 2, 2003.
TA–W–53,995; Lake Region Manufacturing, Inc., Lake Region Medical, Inc., Pittsburgh, PA: January 12, 2003.
TA–W–54,153; Myron Corp., Maywood, NJ: February 2, 2003.
TA–W–54,283; Encompass Group, LLC, Houston, TX: February 13, 2003.
TA–W–54,331; Littelfuse, Inc., Centralia, IL: August 22, 2003.
TA–W–54,099; FCI USA, Inc., Emigsville, PA: February 26, 2004.
TA–W–54,207; Irwin Industrial Tools, Hand Tool Div., Wilmington Plant #1, a div. of Newell Rubbermain, including lased workers of Aerotek, Inc., Wilmington, OH: February 5, 2003.
TA–W–54,148; Bombardier Learjet, Inc., a div. of The Bombardier Aerospace Group, a div. of Bombardier, Inc., Wichita, KS: January 28, 2003.
TA–W–54,047; Siemens Energy and Automation, Process Industries Div., Springhouse, PA: January 19, 2003.
TA–W–54,091; Luzenac America, Inc., Windsor, VT: January 26, 2003.
TA–W–54,129 and A, B,; Kemet Electronics Corp., Mauldin Plant, Simpsonville, SC, Simpsonville Facility, Simpsonville, SC, Fountain Inn Plant, Fountain Inn, SC: "All workers engaged in employment related to the production of ceramic or tantalum electronic capacitors who became totally or partially separated from employment on or after January 3, 2004.
TA–W–54,129C; Kemet Electronics Corp., Shelby Plant, including leased workers of Personnel Services Unlimited, Shelby, NC: "All workers engaged in employment related to the production of ceramic sheet used to make ceramic electronic capacitors, who became totally or partially separated from employment on or after January 30, 2003.
TA–W–54,146; L.S. Starrett Co., Inc., Level Industries Div., Alum Bank, PA: February 2, 2003.
TA–W–53,995; Lake Region Manufacturing, Inc., Lake Region Medical, Inc., Pittsburgh, PA: January 12, 2003.
TA–W–54,081; The Toro Co., including leased workers of Ablest & Adecco, Oxford, MS: "All workers engaged in employment related to the machining of 2 cycle engine components who became totally or partially separated from employment on or after January 12, 2003."

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–54,268; Flextronics, San Diego, CA: February 12, 2003.
TA–W–54,312; Randolph Dimension Corp., Randolph, NY: February 11, 2003.
TA–W–54,301; Supreme Elastic Corp., Conover, NC: February 18, 2003.
TA–W–54,240; Litchfield Fabrics of North Carolina, Gastonia, NC: February 4, 2003.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have not been met for the reasons specified.

The Department as determined that criterion (1) of section 246 has not been met. Workers at the firm are 50 years of age or older.

*TA–W–53,318; **Moll Industries, Austin, TX*
TA–W–53,865; American Standard, Inc., Porcher Div., Chandler, AZ
TA–W–53,843; Diversified Dynamics Corp., Home Right Div., Blaine, MN
TA–W–53,270; C & L Manufacturing Co., Hays, NC

The Department as determined that criterion (3) of Section 246 has not been met. The competitive conditions within the workers' industry is adverse.

*TA–W–54,123; **Bard Endoscopic Technologies, Mentor, OH*
TA–W–53,519; Field Container Co. L.P., St. Clair Pakwell Div., Bellwood, IL

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–53,995; Lake Region Manufacturing, Inc., Lake Region Medical, Inc., Pittsburgh, PA

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–53,962; Wagner Plastics, Inc., Clinton, MS
TA–W–54,387; Shapiro Packing Co., Inc., Augusta, GA
TA–W–54,248; K S Bearings, Inc., Greensburg, IN
TA–W–54,128; Precision Disc Corp., Knoxville, TN
TA–W–54,183; Northland Cranberries, Inc., Jackson Plant, Jackson, WI
TA–W–54,140; Ashton Photo Co., including leased workers from Personnel Source, Salem, OR
TA–W–54,222; Rohn and Haas Co., Elma, WA
TA–W–54,106; Susan Mills, Inc., Hillside, NJ
TA–W–54,094; Solvay Solexis, Inc., Orange, TX
TA–W–54,097; JII Promotions, Inc., a subsidiary of Jordan Industries, Inc., Coshocton, OH
TA–W–54,185; CMD3D, LLC, Saco, ME
TA–W–54,323; Andover Wood Products, a subsidiary of Ethan Allen, Inc., Andover, ME
TA–W–53,993; Newell Rubbermaid, Inc., Wooster, OH
TA–W–54,075; Unilever Home and Personal Care, Cartersville, GA
TA–W–54,085; Franklin Industries, Franklin, PA
TA–W–54,229 & A; Deluxe Global Media Services, LLC, a subsidiary of Deluxe

Media Services, Inc., DVD Replication Facility, Carson, CA and Ontario, CA
TA–W–53,992; Twin City Leather Co., Inc., Gloversville, NY
TA–W–54,079; Kaddis Manufacturing Corp., Parsons, TN
TA–W–54,115 & A; California Amplifier, Inc., KTI Div., Richland Center, WI and Components Div., Spring Green, WI
TA–W–54,221; Greif Brothers Service Corp., Industrial Packaging and Services Div., Kingsport, TN
TA–W–54,055; Entek International LLC, Lebanon, OR
TA–W–54,035; Hi-Country Foods Corp., Selah, WA
TA–W–54,018; Tyco Plastics, a subsidiary of Tyco International, Ltd, Fairmont, MN
TA–W–54,014; Badger Equipment Co., Winona, MN
TA–W–54,176; Malamute Enterprises, Inc., Fishing Vessel (F/V) Malamute Kid, Homer, AK
TA–W–54,064; RMG Foundry LLC, Mishawaka, IN
TA–W–53,978; Academy Die Casting & Plating Co., Inc., Edison, NJ
TA–W–54,217; J.S. Technos Corp., a subsidiary of Robert Bosch Corp., including leased workers from Quality Personnel, Russellville, KY
TA–W–54,392; Safelite Group, Inc., a subsidiary of Safelite Glass Corp., Great Falls, MT
TA–W–54,263; Blue Mountain, Olney Wallcovering, Spartanburg, SC
TA–W–54,191; Hewlett Packard Co., Atlanta, GA
TA–W–54,228; Bangor Hydro Electric Co., a div. of Emera, Inc., Bangor, ME
TA–W–54,298; Accenture LLP, Houston, TX
TA–W–54,154; Emerson Process Management, Performance Solutions Div., Austin, TX
TA–W–54,169; IBM Global Services, Application Management Services, Essex Junction, VT
TA–W–54,205; Westling Manufacturing Co., including leased workers of ASAP Emloyment Services, Princeton, MN
TA–W–54,117; Milliken & Co., Saluda Plant, Saluda, SC
TA–W–54,073; Crews Manufacturing/ Uptex, K.C. Holdings, The Rock, GA
TA–W–54,142; Jac Pac Foods, a subsidiary of Tyson Prepared Foods, Inc., a subsidiary of Tyson Foods, Inc., Manchester, NH
TA–W–52,861; Intermet, Radford Foundry, Radford, VA
TA–W–54,081; The Toro Co., including leased workers of Ablest & Adecco, Oxford, MS: "All workers engaged in employment related to the assembly of 2 cycle engines are denied eligibility to apply for adjustment assistance."

Affirmative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–54,240; Litchfield Fabrics of North Carolina, Gastonia, NC: February 4, 2003.
TA–W–53,888; Artesyn Technologies, Redwood Falls, MN: December 13, 2003.
TA–W–54,182; Flexsys America LP, Nitro Plant, Nitro, WV: February 6, 2003.
TA–W–53,913; Smead Manufacturing, Hastings Facility, Hastings, MN and River Falls Facility, River Falls, WI: December 22, 2002.
TA–W–54,090; Plaid Clothing, Erlanger, KY: January 27, 2003.
TA–W–54,220; National Textiles, Galax, VA: February 5, 2003.
TA–W–54,264; Comeaux Marketing, Inc., St. Amant, LA: February 9, 2003.
TA–W–54,287; Masonite Corp., Danville Components, a subsidiary of Masonite International Corp., including leased workers of Adecco Employment Services, Ameristaff Companies, Inc., and Debbie's Staffing Services, Danville, VA: February 12, 2003.
TA–W–54,120; Packard-Hughes Interconnect, d/b/a Delphi Mechatronic Systems, Foley Operations, a subsidiary of Delphi Packard Electric, a div. of The Delphi Corp., Foley, AL: January 28, 2003.
TA–W–54,114 and A, B, and C; The Boeing Co., Commercial Aircraft Group, Puget Sound Region, WA, Portland, OR, Wichita, KS and Triumph Group, Inc., formerly The Boeing Co., Spokane, WA: March 19, 2004.
TA–W–54,096; Aelco Foundries, Inc., First Odyssey, Milwaukee, WI: January 28, 2003.
TA–W–54,003; MDF Moulding and Millwork, Idabel, OK: January 12, 2003.
TA–W–54,031; Del Monte, Inc., Plant No. 122, Canned Asparagus Operations, a div. of Del Monte Foods, Inc., Toppenish, WA: January 15, 2003.
TA–W–54,013; Sappi Cloquet LLC, d/b/a Sappi Fine Paper North America, formerly known as Potlatch Corp., Cloquet, MN: February 28, 2003.
TA–W–54,021; Honeywell International, Specialty Films Div., including leased workers of Manpower, Pottsville, PA: January 14, 2003.
TA–W–54,040; Wohlert Special Products Co., Sault Ste. Marie, MI: January 14, 2003.
TA–W–54,092; Gerber Plumbing Fixtures, LLC, Gadsden, AL: January 22, 2003.
TA–W–54,121; Coach Leatherware Corp., Carlstadt, NJ: January 22, 2003.
TA–W–54,149; Schott Scientific Glass, Inc., Parkersburg, WV: February 2, 2003.
TA–W–54,289; Regal Beloit Corp., Motor Technologies Group, Leeson Electric, Saukville, WI: February 17, 2003.
TA–W–54,147; Metso Minerals Industries, Inc., Colorado Springs, CO: February 2, 2003.
TA–W–54,261; Alkahn Labels, Inc., Jac-Arts Div., Cochran, GA: January 19, 2003.
TA–W–54,297; Johnson Controls, Inc., Automotive Systems Group, Dayton, NJ: February 17, 2003.
TA–W–54,158; Bestt Liebco Corp., Fond du Lac, WI: February 3, 2003.
TA–W–54,258; Just-A-Stretch of R.I., Inc., Hope, RI: February 11, 2003.
TA–W–54,321 and A; Shorewood Packaging, Clifton, NJ and Teaneck, NJ: February 19, 2003.
TA–W–54,187; ABB, Inc., Instrumentation Div., Warminster, PA: February 2, 2003.
TA–W–54,153; Myron Corp., Maywood, NJ: February 2, 2003.
TA–W–54,283; Encompass Group, LLC, Houston, TX: February 13, 2003.
TA–W–54,331; Littelfuse, Inc., Centralia, IL: August 22, 2003.
TA–W–54,099; FCI USA, Inc., Emigsville, PA: February 26, 2004.
TA–W–54,207; Irwin Industrial Tools, Hand Tool Div., Wilmington Plant #1, a div. of Newell Rubbermaid, including leased workers of Aerotek, Inc., Wilmington, OH: February 5, 2003.

TA–W–54,148; Bombardier Learjet, Inc., a div. of The Bombardier Aerospace Group, a div. of Bombardier, Inc., Wichita, KS: January 28, 2003.

TA–W–54,047; Siemens Energy and Automation, Process Industries Div., Springhouse, PA: January 19, 2003.

TA–W–54,091; Luzenac America, Inc., Windsor, VT: January 26, 2003.

TA–W–54,129 and A, B, C; Kemet Electronics Corp., Mauldin Plant, Simpsonville, SC, Simpsonville Facility, Simpsonville, SC: "All workers engaged in employment related to the production of ceramic or tantalum electronic capacitors, who became totally or partially separated from employment on or after January 3, 2004."

TA–W–54,129C; Kemet Electronics Corp., Shelby Plant, including leased workers of Personnel Services Unlimited, Shelby, NC: "All workers engaged in employment related to the production of ceramic electronic capacitors who became totally or partially separated from employment on or after January 30, 2003."

TA–W–54,146; L.S. Starrett Co., Inc., Level Industries Div., Alum Bank, PA: February 2, 2003.

TA–W–53,291 & A, B; Cone Mills Corp., Carlisle Plant Div., Carlisle, SC, Cone Rutherford County, LLC Div., Cliffside, NC and Cone White Oak, LLC Div., Greensboro, NC: October 14, 2002.

TA–W–54,081; The Toro Co., including leased workers of Ablest & Adecco, Oxford, MS: "All workers engaged in employment related to the machining of 2 cycle engine components who became totally or partially separated from employment on or after January 12, 2003."

I hereby certify that the aforementioned determinations were issued during the months of February and March 2004. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 30, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–7748 Filed 4–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications Of Eligibility To Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 16, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 16, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 30th day of March 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 03/15/2004 and 03/19/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,498	North Manchester Foundry (Comp)	N. Manchester, IA	03/15/2004	02/23/2004
54,499	Federal Mogul Ignition Co. (Comp)	Burlington, IA	03/15/2004	03/05/2004
54,500	Jakel, Inc. (IL)	Highland, IL	03/15/2004	03/12/2004
54,501	AT and T Wireless Services (Wkrs)	Bothell, WA	03/15/2004	03/11/2004
54,502	Goodrich Corp. (NJ)	Englewood, NJ	03/15/2004	02/26/2004
54,503	Amesbury Group, Inc. (Wkrs)	Statesville, NC	03/15/2004	02/24/2004
54,504	SR Telecom (Wkrs)	Redmond, WA	03/16/2004	03/15/2004
54,505	Tri-star Precision (Wkrs)	Gilberts, IL	03/16/2004	03/14/2004
54,506	Sanford Pattern Works, Inc. (Wkrs)	Taylor, MI	03/16/2004	03/15/2004
54,507	Siemens Energy and Automation, Inc. (Comp)	Tucker, GA	03/16/2004	03/15/2004
54,508	Hoover-Hanes Rubber (Comp)	Tallapoosa, GA	03/16/2004	03/03/2004
54,509	Agilent Technologies (Wkrs)	Andover, MA	03/16/2004	03/15/2004
54,510	San Francisco City Lights (Wkrs)	San Francisco, CA	03/16/2004	03/08/2004
54,511	Wausau Papers of NH (Wkrs)	Graveton, NH	03/16/2004	03/16/2004
54,512	Snow River Products, LLC (Comp)	Crandon, WI	03/16/2004	03/15/2004
54,513	Finch Fabricating and Plating (Comp)	Thomasville, NC	03/16/2004	03/09/2004
54,514	Video Products Group, Inc. (Comp)	Camarillo, CA	03/16/2004	03/04/2004
54,515	Eastman Kodak Co. (Comp)	Rochester, NY	03/16/2004	03/01/2004
54,516	Scalamandre (Comp)	Long Island, NY	03/16/2004	03/08/2004
54,517	Tubafor Mill, Inc. (Wkrs)	Amanda Park, WA	03/16/2004	03/15/2004
54,518	Select Machinery Sales (Comp)	Sparta, TN	03/16/2004	03/10/2004
54,519	Gates Corporation (Comp)	Denver, CO	03/17/2004	03/15/2004
54,520	Freeport Brick (Wkrs)	Freeport, PA	03/17/2004	02/18/2004
54,521	Wil-Mort Metals (Wkrs)	Fort Payne, AL	03/17/2004	03/10/2004

APPENDIX—Continued

[Petitions instituted between 03/15/2004 and 03/19/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,522	Louis Berkman, LLC (WV)	Follansbee, WV	03/17/2004	03/16/2004
54,523	Camdett Corporation (NJ)	Camden, NJ	03/17/2004	03/16/2004
54,524	Straitoplane, Inc. (Comp)	Grand Rapids, MI	03/17/2004	03/16/2004
54,525	ADM (IBT)	Milwaukee, WI	03/17/2004	03/16/2004
54,526	Elder Manufacturing (Wkrs)	Dexter, MO	03/17/2004	03/11/2004
54,527	Mountain Manufacturing and Distribution (OR)	Bend, OR	03/17/2004	03/16/2004
54,528	Cerro Fabricated Products, Inc. (Comp)	Brave, PA	03/17/2004	03/16/2004
54,529	Federal Mogul Corp. (UAW)	St. Johns, MI	03/17/2004	03/15/2004
54,530	Quality Consulting and Inspection Serv. (Comp)	Deer Trail, CO	03/18/2004	03/15/2004
54,531	Bose Corporation (Comp)	Hillsdale, MI	03/18/2004	03/17/2004
54,532	G. Leblanc Corp. (Comp)	Kenosha, WI	03/18/2004	03/16/2004
54,533	Brighton Fells China (Wkrs)	Beaver Falls, PA	03/18/2004	02/25/2004
54,534	Newton Hardwoods (ME)	Madison, ME	03/18/2004	03/15/2004
54,535	Tyco Electronics Corp. (Comp)	Menlo Park, CA	03/18/2004	03/05/2004
54,536	Acorn Products Co. (Comp)	Bridgton, ME	03/18/2004	03/12/2004
54,537	RBX Industries (Wkrs)	Bedford, VA	03/18/2004	03/12/2004
54,538	Yorkshire Americas (Comp)	Greenville, SC	03/18/2004	03/17/2004
54,539	Conner Carving and Turning Co. (Comp)	Thomasville, NC	03/18/2004	03/17/2004
54,540	Cajah Corporation (Wkrs)	Hudson, NC	03/18/2004	03/17/2004
54,541	I.H.I. Turbo America (Wkrs)	Shelbyville, IL	03/19/2004	03/09/2004
54,542	Swatch Group U.S. (Wkrs)	Lancaster, PA	03/19/2004	03/13/2004
54,543	Georgia Pacific (Wkrs)	Sandusky, OH	03/19/2004	03/10/2004
54,544	Evco Plastics (NV)	Reno, NV	03/19/2004	03/18/2004
54,545	Control Tech (Comp)	Hickory, NC	03/19/2004	08/08/2004
54,546	USAA Prop and Casualty (Wkrs)	Sacramento, CA	03/19/2004	02/23/2004
54,547	Ispat Inland (Comp)	E. Chicago, IN	03/19/2004	03/18/2004
54,548	Parisi Tool (Comp)	Providence, RI	03/19/2004	03/18/2004
54,549	3M Precision Optics (Wkrs)	Cincinnati, OH	03/19/2004	03/18/2004
54,550	Union Switch and Signal (Wkrs)	Pittsburgh, PA	03/19/2004	03/17/2004
54,551	Eureka Security Printing (Wkrs)	Jessup, PA	03/19/2004	03/11/2004
54,552	International Staple and Machine Co. (Wkrs)	Butler, PA	03/19/2004	02/19/2004
54,553	Gloval Farms Enterprises (Wkrs)	San Joaquin, CA	03/19/2004	03/05/2004
54,554	Volt Services Group (Comp)	Atlanta, GA	03/19/2004	03/16/2004

APPENDIX

[Petitions instituted between 03/22/2004 and 03/26/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,555	Time Square Clothing (CA)	Huntington Pk., CA	03/22/2004	03/18/2004
54,556	Paragon Glass (ME)	Lewiston, ME	03/22/2004	03/18/2004
54,557	Saia-Burgess, Inc. (Comp)	Rockville, IN	03/22/2004	03/10/2004
54,558	TRW Automotive (Comp)	Sterling Hgts., MI	03/22/2004	03/15/2004
54,559	Hammerblow Corp. (IBT)	Wausau, WI	03/22/2004	03/19/2004
54,560	E–Z–Go Textron (Comp)	Augusta, GA	03/22/2004	03/19/2004
54,561	Consolidated Screw and Machining (OR)	Gaston, OR	03/22/2004	03/12/2004
54,562	Davis Tool Engineering (MI)	Detroit, MI	03/22/2004	03/22/2004
54,563	Volt Services Group (Comp)	Houston, TX	03/23/2004	03/16/2004
54,564	Hirsh Industries (Comp)	Des Moines, IA	03/23/2004	03/22/2004
54,565	Peavey Electronics (Wkrs)	Foley, AL	03/23/2004	03/15/2004
54,566	Vantico (MN)	Los Angeles, CA	03/23/2004	03/22/2004
54,567	Artisans, Inc. (Comp)	Glen Flora, WI	03/23/2004	03/19/2004
54,568	Warnaco Intimate Apparel Div. (Comp)	Van Nuys, CA	03/23/2004	03/09/2004
54,569	Honeywell Aerospace (AZ)	Tempe, AZ	03/23/2004	03/03/2004
54,570	Imperial Home Decor Group, Inc. (Wkrs)	Knoxville, TN	03/23/2004	03/16/2004
54,571	New Era Die Company (IAMAW)	Red Lion, PA	03/24/2004	03/16/2004
54,572	General Electric Consumer Finance (Wkrs)	Canton, OH	03/24/2004	03/22/2004
54,573	TI Automotive Systems, LLC (Comp)	Warren, MI	03/24/2004	03/23/2004
54,574	Morgan Construction Co. (Wkrs)	Worchester, MA	03/24/2004	03/23/2004
54,575	Timken U.S. Corp. (Comp)	Rutherfordton, NC	03/24/2004	03/19/2004
54,576	Rogers Corp. (CT)	S. Windham, CT	03/24/2004	03/12/2004
54,577	Jan Tek Industries, LLC (NJ)	Medford, NJ	03/24/2004	03/22/2004
54,578	Motion Picture Editors Guild (CA)	Los Angeles, CA	03/24/2004	03/10/2004
54,579	Clayton Marcus Plant 1 (Wkrs)	Hickory, NC	03/24/2004	03/16/2004
54,580	Plainsman Hosiery, Inc. (Comp)	Ft. Payne, AL	03/24/2004	03/15/2004
54,581	Action West (Wkrs)	El Paso, TX	03/24/2004	03/15/2004
54,582	Missbrenner Wet Printing, Inc. (NJ)	Clifton, NJ	03/24/2004	03/23/2004
54,583	Pasadena Paper Co., LP (PACE)	Pasadena, TX	03/24/2004	03/01/2004

APPENDIX—Continued

[Petitions instituted between 03/22/2004 and 03/26/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,584	William M. Best Consulting Services (Comp)	Aurora, CO	03/25/2004	03/24/2004
54,585	Masterwork Electronics (CA)	Fresno, CA	03/25/2004	03/24/2004
54,586	Brothers Manufacturing, Inc. (Comp)	Hermansville, MI	03/25/2004	03/22/2004
54,587	Ness Technologies (NJ)	Hackensack, NJ	03/25/2004	03/24/2004
54,588	Velcorex, Inc./DMC (Comp)	Orangeburg, SC	03/25/2004	03/18/2004
54,589	Aqua Products, Inc. (NJ)	Cedar Grove, NJ	03/25/2004	03/24/2004
54,590	Johnson and Johnson (Wkrs)	Southington, CT	03/25/2004	03/24/2004
54,591	Palco Labs, Inc. (Comp)	Santa Cruz, CA	03/25/2004	03/16/2004
54,592	Anderson Products (Comp)	Worcester, MA	03/25/2004	03/19/2004
54,593	Meridian Healthcare Management (CA)	Woodland Hills, CA	03/25/2004	03/17/2004
54,594	XO Communications (Wkrs)	Santa Ana, CA	03/26/2004	03/15/2004
54,595	Crawford Knitting, Inc. (Comp)	Ramseur, NC	03/26/2004	03/25/2004
54,596	Mid-South Electronics, Inc. (Wkrs)	Raleigh, NC	03/26/2004	03/01/2004
54,597	Panacea Products (Wkrs)	Dallas, NC	03/26/2004	03/25/2004
54,598	Computer Science Corp. (CSC) (Wkrs)	RTP, NC	03/26/2004	03/17/2004
54,599	Forrest Consultants, Inc. (Comp)	W. Hazelton, PA	03/26/2004	03/24/2004
54,600	Measurement Specialties, Inc. (NJ)	Fairfield, NJ	03/26/2004	03/26/2004
54,601	Lear Corporation (Comp)	Auburn Hills, MI	03/26/2004	03/15/2004
54,602	Global Farms Ent., Inc. (Wkrs)	San Joaquin, CA	03/26/2004	03/05/2004
54,603	Cross Creek Apparel, LLC (Comp)	Mt. Airy, NC	03/26/2004	03/16/2004
54,604	Penn Ventilation (Comp)	Junction City, KY	03/26/2004	03/17/2004
54,605	Lithonia Lighting (Wkrs)	Decatur, GA	03/26/2004	03/16/2004
54,606	Cintas (Wkrs)	Portal, GA	03/26/2004	03/15/2004
54,607	Century Fasteners Corp. (Comp)	Richmond, KY	03/26/2004	03/17/2004

[FR Doc. 04–7741 Filed 4–5–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,934]

Phillips Plastics Corp., Operations Center, Eau Claire, WI; Notice of Revised Determination on Reconsideration

By application of February 18, 2004, the petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on January 14, 2004, based on the finding that the petitioning workers did not produce an article within the meaning of section 222 of the Act. The denial notice was published in the **Federal Register** on February 6, 2004 (69 FR 5866).

Pursuant to the receipt of the request for reconsideration, and upon contact with the company official, it has become apparent that workers of Phillips Plastics Corporation, Operations Center, Eau Clair, Wisconsin provided accounting, human resources and information technology services to affiliated facilities. It was further revealed that the worker separations from the subject firm were caused by a reduced demand for their services from several subdivisions whose workers produce an article and who are currently under certification for TAA.

Conclusion

After careful review of the facts obtained in the investigation, I determine that workers of Phillips Plastics Corporation, Operations Center, Eau Clair, Wisconsin qualify as adversely affected secondary workers under section 222 of the Trade Act of 1974. In accordance with the provisions of the Act, I make the following certification:

"All workers of Phillips Plastics Corporation, Operations Center, Eau Clair, Wisconsin, who became totally or partially separated from employment on or after December 31, 2002, through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed in Washington, DC, this 18th day of March, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7750 Filed 4–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,413]

Summitomo Electric Wiring Systems, Inc., Scottsville Plant #2, Scottsville, KY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 3, 2004, in response to a petition filed by a company official on behalf of workers at Sumitomo Electric Wiring Systems, Inc., Scottsville Plant #2, Scottsville, Kentucky.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 26th day of March, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7746 Filed 4–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,680]

U.S. Axle, Inc., Pottstown, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at U.S. Axle, Inc., Pottstown, Pennsylvania. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–53,680; U.S. Axle, Inc. Pottstown, Pennsylvania (March 17, 2004)

Signed at Washington, DC, this 30th day of March, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–7752 Filed 4–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Grants for Small Grassroots Organizations

AGENCY: Employment and Training Administration (ETA)/ Center for Faith-Based and Community Initiatives (CFBCI), Department of Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA). This notice contains all of the necessary information and forms needed to apply for grant funding (SGA/DFA 04–104).

Catalog of Federal Assistance No.: 17.257.

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor (DOL) announces the availability of $1,000,000 to award grants to eligible "grass-roots' organizations with the ability to connect to the local One-Stop delivery system. The term grassroots' is defined under the Eligibility Criteria.

DATES: Applications will be accepted commencing on April 6, 2004. The closing date for receipt of applications under this announcement is May 7, 2004. Applications must be received by 4 p.m. (e.s.t.) at the address below: No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored. Telefacsimile (FAX) applications will not be honored.

SUPPLEMENTARY INFORMATION:

Part I. Authorities

These grants are made under the following authorities:

- The Workforce Investment Act of 1998 (WIA or the Act) (Pub. L. 105–220, 29 U.S.C. 2801 *et seq.*)
- The WIA Final Rule, 20 CFR parts 652, 660–671 (65 FR 49294 (August 11, 2000);
- Executive Order 13198; "Rallying the Armies of Compassion"
- Training and Employment Guidance Letter 17–01 ("Incorporating and Utilizing"
- Grassroots, Community-Based Organizations Including Faith-Based Organizations in Workforce Investment Activities and Programs")
- Executive Order 13279; "Equal Protection of the Laws for Faith-Based and Community Organizations"

II. Funding Opportunity Description

A. Overview of the Workforce Investment Act

The Workforce Investment Act of 1998 (WIA) established a comprehensive reform of existing Federal job training programs with amendments impacting service delivery under the Wagner-Peyser Act, Adult Education and Literacy Act, and the Rehabilitation Act. A number of other Federal programs are also identified as required partners in the One-Stop delivery system to provide comprehensive services for all Americans to access the information and resources available that can help in the achievement of their career goals. The intention of the One-Stop system is to establish a network of programs and providers in co-located and integrated settings that are accessible for individuals and businesses alike in approximately 600 workforce investment areas established throughout the nation. There are currently over 1,900 comprehensive Centers and over 1,600 affiliated Centers across the United States. WIA established State and Local Workforce Investment Boards focused on strategic planning, policy development, and oversight of the workforce investment system, and accorded significant authority to the nation's Governors and local chief elected officials to further implement innovative and comprehensive delivery systems. The vision, goals and objectives for workforce development under the WIA decentralized system are fully described in the State strategic plan required under Section 112 of the legislation. This State strategic workforce investment plan—and the operational experience gained by all the partners to date in implementing the WIA-instituted reforms—help identify the important "unmet needs" and latent opportunities to expand access to One-Stop by all the population segments within the local labor market.

B. Administration Strategy

Engagement of Faith-Based and Community Organizations Under the Workforce Investment Act

On January 29, 2001, President George W. Bush issued Executive Order 13198, creating the Office for Faith-Based and Community Initiatives in the White House and centers in the departments of Labor, Health and Human Services (HHS), Housing and Urban Development (HUD), Education (ED), Justice (DOJ). President Bush charged the Cabinet centers with identifying statutory, regulatory, and bureaucratic barriers that stand in the way of effective faith-based and community initiatives, and to ensure, consistent with the law, that these organizations have equal opportunity to compete for federal funding and other support.

In early 2002, the Department's Center for Faith-Based and Community Initiatives (CFBCI) and ETA developed and issued Solicitations for Grant Applications (SGAs) to engage intermediary and grass-roots organizations in our workforce system-building. These SGAs were designed to involve the faith-based and community-based organizations in service delivery, strengthen their existing partnership with the local One-Stop delivery system, while providing additional points of entry for customers into that system.

These 2002 grants embodied the Department's principal strategy for implementing the Executive Order by creating new avenues through which qualified organizations can more fully participate under the Workforce Investment Act while applying their particular strengths and assets in service provision to our customers. These *solicitations* also proceeded from an ETA–CFBCI mutual premise: that the involvement of community-based organizations and faith-based organizations can both complement and supplement the efforts of local workforce investment systems in providing universal access and serving

the training, job and career-support needs of many of our citizens.

Both ETA and CFBCI are committed to bringing new Intermediary and grass-roots organizations to workforce system-building through the issuance of a new solicitation in 2004. This new solicitation draws on "lessons learned" in 2002 and 2003 while introducing several "promising practices" introduced by other ETA grantees. The new solicitation also places significant emphasis on performance outcomes—documenting and quantifying the additional value the Intermediary and its sub-grantees bring to the One-Stop delivery system in the community.

Through this competition, ETA seeks to ensure that an important Workforce Investment Act tenet—universal access to the programs and services offered under WIA—is further rooted in the customer-responsive delivery systems already established by the Governors, local elected officials and local Workforce Investment Boards. ETA also reaffirms its continuing commitment to those customer-focused reforms instituted by State and local governments which help Americans access the tools they need to manage their careers through information and high quality services, and to help U.S. companies find skilled workers.

Faith-based and community-based organizations present strong credentials for full partnership in our mutual system-building endeavors. Faith-based and community-based organizations are trusted institutions within our poorest neighborhoods. Faith-based and community-based organizations are home to a large number of volunteers who bring not only the transformational power of personal relationships to the provision of social service but also a sustained allegiance to the well-being and self-sufficiency of the participants they serve. Through their daily work and specific programs, these organizations strive to achieve some common purposes shared with government—reduction of welfare dependency, attainment of occupational skills, entry and retention of all our citizens in good-paying jobs. Through this solicitation, ETA and CFBCI strive to leverage these programs, resources and committed staff into the workforce investment strategies already embodied in State and local strategic plans.

C. Project Objectives

The selected grantees will be expected to achieve the following objectives:

- Help individuals enter employment with career opportunities or increase skills,and education, both through providing services such as education, pre and post job placement, mentoring, life skills training, employability skills training, job coaching, and through utilizing the services of the One-Stop Career Center.
- Expand the access of faith-based and community-based organizations' clients and customers to the training, job and career services offered by the local One-Stops;
- Effectively maximize the dollars invested by leveraging volunteer and in-kind donations;
- Thoroughly document the impact and outcomes of these grant investments through quarterly and annual reporting; and
- Establish methods and mechanisms to ensure sustainability of these partnerships and participation levels beyond the life of the grant.

III. Award Information

ETA has identified $1,000,000 from the FY 2004 appropriation for One-Stop/America's Labor Market Information System. The agency expects to award approximately 40–50 grants. The grant amount for each grass-roots organization is expected to range between $20,000 and $25,000. The period of performance will be approximately 18 months from the date of execution by the Department. The grant funds will be available for expenditure until June 30, 2006.

Anticipated Announcement and Award Dates

Announcement of this award is expected to occur by June 30, 2004.

IV. Eligibility Information

1. Eligible Applicants

For purposes of this announcement, eligible grassroots organizations must be non-profits which:

(1) Have social services as a major part of their mission;

(2) Are headquartered in the local community to which they provide these services;

(3) (a) Have an annual social services budget of $350,000 or less, or (b) Have 6 or fewer full-time equivalent employees.

Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be employed by grantees or in the selection of sub-recipients.

The government is prohibited from providing direct financial assistance for inherently religious activity.* Therefore, as a general rule, subawards may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious activities and participation in such activities must be voluntary. (If, however, an organization receives financial assistance as a result of the choice of a beneficiary, such as through a voucher, the organization may integrate religion throughout its program).

* In this context, the term financial assistance that is provided directly by a government entity or an intermediate organization, as opposed to financial assistance that an organization contexts, the term 'direct' financial assistance may be used to refer to financial assistance that an organization receives directly from the Federal government (also known as "discretionary" assistance), as opposed to assistance that it receives from a State or Local government (also known as "indirect" or "block" grant assistance). The term "direct" has the former meaning throughout this SGA.

Veterans Priority: In addition, this program is subject to the provisions of the "Jobs for Veterans Act", Pub. L. 107–288, which provides priority of services to veterans and certain of their spouses in all Department of Labor funded job training programs. Please note that, to obtain priority of service, a veteran or spouse must meet the program's eligibility requirements. Comprehensive policy guidance is being developed and will be issued in the near future.

V. Application and Submission Information

1. Application Forms

Application forms will not be mailed. They are published as part of this **Federal Register** notice, which may be obtained from your nearest public library or online at *http://www.archives.gov/federal_register/index.html.*

2. Submission Date and Times

Applications will be accepted commencing on April 6, 2004. The closing date for receipt of applications under this announcement is May 7, 2004. Applications must be received by 4 p.m. (e.s.t.) at the address below: No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications must be mailed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: James Stockton, SGA/DFA 04–104, 200 Constitution

Avenue, NW., Room S–4220, Washington, DC 20210. Telefacsimile (FAX) applications will not be accepted. Applicants are advised that mail in the Washington area may be delayed due to mail decontamination procedures.

FOR FURTHER INFORMATION CONTACT: *James Stockton,* Grants Officer, Division of Federal Assistance, Telephone (202) 693–3301 (this is not a toll free-number). You must specifically ask for *James Stockton.* Questions can also be faxed to James Stockton, Fax, (202) 693–2879, please include the SGA/DFA 04–104, a contact name, fax and phone numbers. This announcement will be also published on the Employment and Training Administration (ETA) Web page at *http://www.doleta.gov/usworkforce.* This Web page will also provide responses to questions that are raised by applicants during the period of grant application preparation. Award notifications will also be announced on this Web page.

Mailing and Hand Delivery Conditions

1. *Late Applications.* Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it:

- Was sent by U.S. Postal Service registered or certified mail not later than May 6, 2004; or
- Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to addressee, not later than 4 p.m. at the place of mailing two working days before May 6, 2004. The term "working days" excludes weekends and U.S. Federal holidays. "Post-marked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

2. *Withdrawal of Applications.* Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identify is made known and the representative signs a receipt for the proposal.

3. *Hand Delivered Proposals.* It is preferred that applications be mailed at least five days before the closing date. To be considered for funding, hand-delivered applications must be received at the designated address by 4 p.m., (e.t.), May 7, 2004. All overnight mail will be considered to be hand delivered and must be received at the designated place by the specified closing date and time. Telegraphed, e-mailed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for determination of non-responsive.

4. *Submission of Applications.* Applicants must submit one copy with an original signature and two additional copies of their proposal. *The Statement of Work must be limited to 5 pages.* The only attachments permitted will be agreements with or letters of support from local Workforce Investment Boards and/or local One-Stop operators. The application must be double-spaced, and on single-sided, numbered pages. A font size of at least twelve (12) pitch is required with one-inch margins (top, bottom and sides.)

A. Required Contents

There are three required sections:

- Section I—Application for Federal Assistance (SF 424A)
- Section II—Budget Information (SF 424B)
- Section III—Technical Proposal—Statement of Work

Section I—Application for Federal Assistance

The SF–424A is included in the announcement as Attachment A. It must be signed by a representative authorized by the governing body of the applicant to enter into grant agreement.

Section II—Budget Information

The SF–424B is included in the announcement as Attachment B.

Note: Except as specifically provided, DOL/ETA acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. For example, the OMB circulars require that an entity's procurement procedures must require that all procurement transactions must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement, *i.e.,* avoid competition.

Section Ill—Technical Proposal (Statement-of-Work) (Not To Exceed 5 Typed, Double Space Pages)

The Statement of Work sets forth a strategic plan for the use of awarded funds and establishes measurable goals for increasing organizational participation in the One-Stop service delivery system to more fully serve the clientele and members of community-based and faith-based organizations. Below are the required elements of the Statement of Work and the rating criteria that reviewers will use to evaluate the proposal.

1. *Organizational History and Description of Community Need* (15 Points)

- Describe the structure of the applicant's organization. Describe the history of the organization in meeting community needs including a brief listing of services provided.
- Describe the overall community need. What services will your organization provide to address a need that the One-Stop Career Center is not fully addressing? (This description should include coverage of population(s) to be served and the services to be provided. Populations could include such groups as: ex-offenders, immigrants, limited English-speaking, homeless and individuals with disabilities. Services can include, but are not limited to, such activities as: education, pre and post job placement mentoring, life skills training, employability skills training, and job coaching. Other populations and services can be identified.)

Rating Criteria

1. Does the description reflect a clear understanding of a community need?

2. *Description of Partnerships and Linkages* (20 Points)

- Please describe your plans to work as partners with the One-Stop Delivery system to help the target population enter and succeed in the workforce. If you have not previously worked with the One-Stop Career Center, please describe actions you have taken to develop the relationships as you developed this grant. If you have worked with the One-Stop Career Center, please describe what actions you have taken to further develop your relationship.
- Please describe the relationships you have with other non-profit organizations who provide similar or complementary services and how you will leverage pre-existing relationships and partnerships to help achieve your goals for the populations you will service and how you will avoid duplication.

Rating Criteria

1. Does the narrative describe an approach and process by which the organization will successfully partner with the One-Stop delivery system to address the unmet need?

2. Does the applicant present evidence of discussions with the One-Stop delivery system (*e.g.,* a signed

letter from the Local Board or other One-Stop delivery system principals)?

3. Does the organization's history of collaboration with other non-profits in the community support the conclusion that these grant activities will be successful?

3. *Presentation of Strategic Plan, Goals, and Timeline* (50 Points)

- The applicant should describe the methodology for providing services, including any educational or training curriculum or other tools to be used. Describe the staff/volunteer positions that will be providing services under this grant.
- The applicant must present a timeline of major, measurable tasks and activities to be undertaken. The timeline should include how many people will receive services and/or participate and complete classes detailed in the training curriculum.
- The applicant should also describe the measurable outcomes that the program participants will achieve over the life of this grant. Measurable outcomes must include how many participants will enter employment over the grant period and how many of those individuals will stay employed through the end of the grant period (retention) . Outcomes might also include such measures as how many participants will increase numeracy or literacy or enter an educational or training program or the average increase of wages for program participants. The Department understands that these outcomes will be achieved by bringing together the resources of the workforce system as well as the grantee.

Rating Criteria

1. Do the activities and tasks presented on the timeline appear to be achievable with the likelihood of project success given available resources?

2. Does the applicant provide tangible outcome measures and goals for success for both the organization and Department to gauge the impact of the activities on meeting the community need? Do these goals include tracking employment outcomes and retention outcomes for those served?

4. *Description of Measurements of Success* (15 Points)

- Describe what mechanisms you will develop, in partnership with the One-Stop delivery system, to track your success in achieving promised goals and outcomes.
- Describe any other methods you will use for evaluating your project's success.

Rating Criteria

1. Does the applicant reflect an understanding of what it would need to do in order to track progress and success?

Application Review Information

VII. Criteria, Review and Selection Process

A technical review panel will make careful evaluation of applications against the rating criteria. The review panel recommendations are advisory. The ETA grant officer will fully consider the panel recommendations and take into account geographic balance to ensure the most advantageous award of these funds to accomplish the system-building purposes outlined in the Summary and Statement of Work. The grant officer may consider any information that comes to his or her attention. The grant officer reserves the right to award without negotiation. The criteria above will serve as the basis upon which submitted applications will be evaluated.

Section IV. Reporting Requirements

The grantee is required to provide the reports and documents listed below:

Quarterly Financial Reports. A Quarterly Financial Status Report (SF–269) is required until such time as all funds have been expended or the period of availability has expired. Quarterly reports are due 30 days after the end of each calendar year quarter. Grantee must use ETA's On-line Electronic Reporting System.

Progress Reports. The grantee must submit a quarterly financial and narrative performance progress report to the Federal Project Officer within 30 days following each quarter. Two copies are to be submitted providing a detailed account of activities undertaken during that quarter.

Part VIII. Resources for the Applicant

The Department of Labor maintains a number of Web-based resources that may be of assistance to applicants. The Web page for the Department's Center for Faith-Based & Community Initiatives (*http://www.dol.gov/cfbci*) is a valuable source of background on this initiative. America's Service Locator (*http://www.servicelocator.org*) provides a directory of our nation's One-Stop Career Centers. The National Association of Workforce Boards maintains a Web page (*http://www.nawb.org/asp/wibdir.asp*) which contains contact information for the State and local Workforce Investment boards. Applicants are encouraged to review "Understanding the Department of Labor Solicitation for Grant Applications and How to Write an Effective Proposal" (*http://www.dol.gov/cfbci/sgabrochure.htm*). "Questions and Answers" regarding this solicitation will be posted and updated on the Web (*http://www.doleta.gov/usworkforce*). For a basic understanding of the grants process and basic responsibilities of receiving Federal grant support, please see "Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government (*http://www.fbci.gov*).

Signed at Washington, DC, this 31st day of March, 2004.

James W. Stockton,

Grant Officer.

Attachments:

Appendix A—SF–424

Appendix B—Budget Form

Appendix C—Survey of Ensuring Equal Opportunity for Applicants

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

Version 7/03

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Pre-application ☐ Construction ☐ Non-Construction	**3. DATE RECEIVED BY STATE**	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	**Organizational Unit:** Department:
Organizational DUNS:	Division:
Address: Street:	**Name and telephone number of person to be contacted on matters involving this application (give area code)** Prefix: First Name:
City:	Middle Name
County:	Last Name
State: Zip Code	Suffix:
Country:	Email:
6. EMPLOYER IDENTIFICATION NUMBER *(EIN):* ☐☐-☐☐☐☐☐☐☐	Phone Number (give area code) Fax Number (give area code)

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)	**7. TYPE OF APPLICANT:** (See back of form for Application Types) Other (specify)
	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE (Name of Program):	**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**
12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*	
13. PROPOSED PROJECT Start Date: Ending Date:	**14. CONGRESSIONAL DISTRICTS OF:** a. Applicant b. Project

15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**
a. Federal	$ .00	a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE:
b. Applicant	$ .00	
c. State	$ .00	
d. Local	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
e. Other	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**
g. TOTAL	$ .00	☐ Yes If "Yes" attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative

Prefix	First Name	Middle Name
Last Name		Suffix
b. Title		c. Telephone Number (give area code)
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:	Item:	Entry:
1.	Select Type of Submission.	11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).	12.	List only the largest political entities affected (e.g., State, counties, cities).
3.	State use only (if applicable).	13	Enter the proposed start date and end date of the project.
4.	Enter Date Received by Federal Agency Federal identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank.	14.	List the applicant's Congressional District and any District(s) affected by the program or project
5.	Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application.	15	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.	16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
7.	Select the appropriate letter in the space provided. A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School District I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) O. Not for Profit Organization	17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
8.	Select the type from the following list: • "New" means a new assistance award. • "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. • "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter: A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration	18	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)
9.	Name of Federal agency from which assistance is being requested with this application.		
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.		

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

OMB No. 1890-0014 EXP. 1/31/2006

Purpose: The Federal government is committed to ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. In order for us to better understand the population of applicants for Federal funds, we are asking nonprofit private organizations (not including private universities) to fill out this survey.

Upon receipt, the survey will be separated from the application. Information provided on the survey will not be considered in any way in making funding decisions and will not be included in the Federal grants database. While your help in this data collection process is greatly appreciated, completion of this survey is voluntary.

Instructions for Submitting the Survey: If you are applying using a hard copy application, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it along with your application package. If you are applying electronically, please submit this survey along with your application.

Applicant's (Organization) Name: _____

Applicant's DUNS Number: _____

Grant Name: _____ **CFDA Number:** _____

1. Does the applicant have 501(c)(3) status?

   ☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ☐ 3 or Fewer ☐ 15-50
   ☐ 4-5 ☐ 51-100
   ☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ☐ Less Than $150,000
   ☐ $150,000 - $299,999
   ☐ $300,000 - $499,999
   ☐ $500,000 - $999,999
   ☐ $1,000,000 - $4,999,999
   ☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

   ☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

   ☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

   ☐ Yes ☐ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

Provide the applicant's (organization) name and DUNS number and the grant name and CFDA number.

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 2202-4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, D.C. 20202-4725

OMB No. 1890-0014 Exp. 1/31/2006

[FR Doc. 04–7658 Filed 4–5–04; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Grants for Workforce Investment Boards

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA/DFA 04–103).

Catalog of Federal Assistance No.: 17.257.

SUMMARY: This notice contains all of the necessary information and forms needed to apply for grant funding. The U.S. Department of Labor (USDOL), Employment and Training Administration (ETA), announces the availability up to $5.5 million for grants to eligible Workforce Investment Boards (WIBs) that have demonstrated successfully the ability to form working partnerships with grassroots faith-based and community organizations (FBCOs).

This grant will build upon successful ETA grants from program years (PY) 2001 and 2002 that focused on the use of intermediaries to build partnerships between FBCOs and local One-Stop systems. The WIB will develop and implement an 18 month project to encourage the formation of long-term partnerships with FBCOs that meet an unmet community need related to hard-to-serve populations, ex-offender re-integration, and employment and welfare-to-work.

This investment supports and complements the President's High-Growth Job Training Initiative. The foundation of this initiative is the creation of partnerships to work collaboratively in the development of solutions to the human resource challenges facing our growth industries while developing maximum access for American workers to gain the competencies they need to obtain good jobs. These partnerships include the public workforce system, business and industry, education and training providers and economic development principals; this solicitation is designed to also extend the partnership invitation to FBCOs through the direct involvement of our nation's Workforce Investment Boards.

This grant also complements ETA's ongoing sectoral employment research and evaluations—*i.e.*, identifying workforce needs and opportunities within a local or regional industry or cross-industry occupational group while retaining a focus on economic performance and competitiveness. FBCOs can discharge a significant community role in assisting Boards by bringing new entrants to the job market who can be trained and equipped to meet emerging and evolving industry needs. Each applicant Board will identify up to three businesses or industry sectors to collaborate with the Board and FBCOs within the local One-Stop system to provide jobs for qualified employees from the identified geographic areas.

DATES: Applications will be accepted commencing on April 6, 2004. The closing date for receipt of applications under this announcement is May 6, 2004. May 6, 2004. Applications must be received by 4 p.m. (ET) at the address below: No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored. Telefacsimile (FAX) applications will not be honored.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

A. Overview of ETA and CFBCI Initiatives

DOL CFBCI works to remove administrative and regulatory barriers that would prevent faith-based and community organizations from competing equally for federal dollars. In addition, CFBCI develop innovative programs to foster partnerships between DOL-funded programs and faith-based and community organizations (FBCOs). CFBCI educate organizations about local opportunities to collaborate with the workforce development system and about opportunities to participate in national grant programs. CFBCI also work with local government officials and administrators to integrate faith-based and community organizations into the strategic planning and service delivery processes of local Workforce Investment Boards.

Since 2001, CFBCI has worked with ETA to provide $22.1 million in grants to assist states, intermediary organizations and grassroots groups in creating partnerships between FBCOs and the One-Stop Career Center System. In addition to grants, CFBCI has undertaken technical assistance activities that are designed to help FBCOs access and partner with the $15 billion state and local workforce development system. Begun in Memphis, Tennessee, and Milwaukee, Wisconsin, the Touching Lives and Communities Pilot Program provided in-depth technical assistance to local alliances of FBCOs, elected officials and workforce development boards to remove barriers and foster partnerships at the local level. The report on this effort, *Experiences from the Field: Fostering Workforce Development Partnerships with Faith-Based and Community Organizations*, serves as the basis for a new nation-wide effort to encourage partnerships between FBCOs and Workforce Investment Boards called the Touching Lives and Communities Technical Assistance Program (TLC–TAP). Additionally, CFBCI produced *Bridging the Gap: Meeting the Challenges of Universal Access Through Faith-Based and Community Partnerships*, which highlights strategies by 2002 State and Intermediary grantees to help job seekers access services through grassroots faith-based and community organizations. CFBCI also has created *Empowering New Partnerships: Faith-Based and Community Initiatives in the Workforce System*, which provides an overview of basic strategies for engaging grassroots organizations in the workforce system.

Through TLC–TAP, the CFBCI and ETA are creating a peer-to-peer learning network, publishing tool kits and other resource materials and hosting national conference calls on topics related to the initiative. For more resources, please visit the CFBCI Web site, *http://www.dol.gov/cfbci* as well as the TLC–TAP Web site, *http://www.nawb.org/fbci*.

B. Project Objectives

The Grantee(s) will implement, in partnership with USDOL, a project designed to meet the following objectives:

- Create new sustainable, financial and non-financial relationships with grassroots FBCOs and other partners that help individuals in targeted area transition to industries/careers that are growing locally and can offer strong career opportunities. Local intermediary organizations can be effective partners in building FBCO collaboratives when they have preexisting relationships with grassroots organizations.
- Identify specific census tract(s) (neighborhoods) with high unemployment rates and current and potential FBCO resources in those neighborhoods (resource map) to help hard-to-serve individuals prepare for and sustain employment. For example, the WIB may look for areas designated as Enterprise Communities or Empowerment Zones.
- Obtain commitments from up to three businesses or business sectors to

collaborate with the local Board, One-Stop system, and FBCOs to provide a number of jobs with long-term career opportunities and hire qualified employees from the identified disadvantaged neighborhoods. Businesses may include corporations or small-medium sized businesses, that are independently owned and operated and not dominant in their field of operation.

- Increase the capacity of the grassroots organizations to provide services and manage government grant dollars.
- Establish mechanisms to document the number of individuals from the identified high unemployment area(s) who are currently being served by One-Stop and demonstrate how this grant will increase the number of individuals using services and becoming employed.

Through this grant investment of $5.5 million, the Department intends to help approximately 2,000 people obtain or advance in employment.

C. Anticipated Announcement and Award Dates

Announcement of this award is expected to occur by June 30, 2004.

D. Funding Availability and Period of Performance

ETA has identified $5.5 million from the FY 2004 appropriation for One Stop/America's Labor Market Information System. ETA expects to award approximately 10 to 20 grants based on the rating of applications and other factors, which may include urban/rural and geographical balance. The grant amount for each WIB is expected to range between $300,000–$500,000. The period of performance will be approximately 18 months from the date of execution by the Department. The grant funds will be available for expenditure until June 30, 2006.

II. Eligibility Information

A. Eligible Applicants

Workforce Investment Boards (WIB) from all geographic areas are eligible to apply for these funds including:

- The state Workforce Investment Board;
- A local Workforce Investment Board; or
- Consortia of local (including rural) Workforce Investment Boards.

The WIB is expected to issue substantial subawards to eligible grassroots organizations. For purposes of this announcement, eligible grassroots organizations must be non-profits which:

- Have social services as a major part of their mission;
- Are headquartered in the local community to which they provide these services;
- (a) Have a annual social services budget of $350,000 or less, or (b) have 6 or fewer full-time equivalent employees.

The WIB may choose also to contract with a non-profit intermediary or hire staff members from the targeted community who will be able to help the WIB conduct outreach to grassroots organizations and provide technical assistance to the sub-awardees. However, a majority of the funds should be used for sub-awarding directly to the grassroots organizations.

Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be employed by grantees or in the selection of sub-recipients.

Additionally, the government is prohibited from providing direct financial assistance for inherently religious activity*. Therefore, as a general rule, subawards may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious activities and participation in such activities must be voluntary. (If, however, an organization receives financial assistance as a result of the choice of a beneficiary, such as through a voucher, the organization may integrate religion throughout its program.

*In this context, the term financial assistance that is provided directly by a government entity or an intermediate organization, as opposed to financial assistance that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term "direct" financial assistance may be used to refer to financial assistance that an organization receives directly from the Federal government (also known as "discretionary" assistance), as opposed to assistance that it receives from a State or Local government (also known as "indirect" or "block" grant assistance). The term "direct" has the former meaning throughout this SGA.

Veterans Priority: In addition, this program is subject to the provisions of the "Jobs for Veterans Act", Pub. L. 107–288, which provides priority of services to veterans and certain of their spouses in all Department of Labor funded job training programs. Please note that, to obtain priority of service, a veteran or spouse must meet the program's eligibility requirements. Comprehensive policy guidance is being developed and will be issued in the near future.

III. Application and Submission Information

DATES: Applications will be accepted commencing on April 6, 2004. The closing date for receipt of applications under this announcement is May 6, 2004. Applications must be received by 4 p.m. (ET) at the address below: No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications must be mailed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: James Stockton, SGA/DFA 04–103, 200 Constitution Avenue, NW., Room S–4220, Washington, DC 20210. Telefacsimile (FAX) applications will not be accepted. Applicants are advised that mail in the Washington area may be delayed due to mail decontamination procedures.

FOR FURTHER INFORMATION CONTACT: *James Stockton*, Grants Officer, Division of Federal Assistance, Telephone (202) 693–3301 (this is not a toll free-number). You must specifically ask for James Stockton. Questions can also be faxed to James Stockton, at (202) 693–2879, please include the SGA/DFA 04–103, a contact name, fax and phone numbers. This announcement will be also published on the Employment and Training Administration (ETA) Web page at *http://www.doleta.gov/usworkforce*. This Web page will also provide responses to questions that are raised by applicants during the period of grant application preparation. Award notifications will also be announced on this Web page.

SUPPLEMENTARY INFORMATION: These grants are made under the following authorities:

- The Workforce Investment Act of 1998 (WIA or the Act) (Pub. L. 105–220, 29 U.S.C. 2801 et seq.).
- The WIA Final Rule, 20 CFR parts 652, 660–671 (65 FR 49294 (August 11, 2000);
- Executive Order 13198; "Rallying the Armies of Compassion"
- Training and Employment Guidance Letter 17–01 ("Incorporating and Utilizing Grassroots, Community-Based Organizations Including Faith-Based Organizations in Workforce Investment Activities and Programs")
- Executive Order 13279; "Equal Protection of the Laws for Faith-Based and Community Organizations"

Mailing and Handling Conditions

1. *Late Applications.* Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it:

• Was sent by U.S. Postal Service registered or certified mail not later than May 6, 2004; or

• Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to addressee, not later than 4 p.m. at the place of mailing two working days before May 6, 2004. The term "working days" excludes weekends and U.S. Federal holidays. "Post-marked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

2. *Withdrawal of Applications.* Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identify is made known and the representative signs a receipt for the proposal.

3. *Hand Delivered Proposals.* It is preferred that applications be mailed at least five days before the closing date. To be considered for funding, hand-delivered applications must be received at the designated address by 4:00 p.m., (ET) May 6, 2004. All overnight mail will be considered to be hand delivered and MUST BE RECEIVED at the designated place by the specified closing date and time. Telegraphed, e-mailed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for determination of non-responsive.

Submission of Applications

Applicants must submit one copy with an original signature and two additional copies of their proposal. The Statement of Work must be limited to 5 pages. The only attachments permitted will be agreements with or letters of support from local Workforce Investment Boards and/or local One-Stop operators. The application must be double-spaced, and on single-sided, numbered pages. A font size of at least twelve (12) pitch is required with one-inch margins (top, bottom and sides.)

1. Required Contents

There are three required sections:

• Section I—Application for Federal Assistance (SF 424A)
• Section II—Budget Information (SF 424B)
• Section III—Technical Proposal—Statement of Work

Section I—Application for Federal Assistance

The SF–424A is included in the announcement as Attachment A. It must be signed by a representative authorized by the governing body of the applicant to enter into grant agreement.

Section II—Budget Information

The SF–424B is included in the announcement as Attachment B.

Note: Except as specifically provided, DOL/ETA acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. For example, the OMB circulars require that an entity's procurement procedures must require that all procurement transactions must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement, *i.e.*, avoid competition.

Section III. Technical Proposal (Statement of Work)

The Department of Labor will screen all applications to determine whether required elements are present and clearly identifiable.

1. Technical Approach (Description of the proposed plan and activities of WIB and its sub-grantees)—40 Points

This section of the narrative provides the applicant's strategy for creating new sustainable, financial and non-financial relationships with grassroots, FBCOs and other partners that help individuals in targeted area transition to industries/careers that are growing locally and can offer strong career opportunities. This section of the narrative should describe fully the specific needs in the population in the targeted area that the WIB and grassroots organization partnerships will address. This population may include: low-income working individuals, individuals transitioning from public assistance, individuals with disabilities, ex-offenders, individuals with Limited English Proficiency, and other hard-to-serve populations.

The Department expects that the WIB will subaward grants for services to grassroots faith-based and community organizations and may work with non-profit intermediary organizations or hire staff who have strong relationships with grassroots faith-based and community organizations.

The proposal's narrative should include the following:

• Describe strategy for resource mapping (documenting existing and potential FBCO programs and services in the identified neighborhood(s) that help hard-to-serve individuals prepare for and sustain employment). Include plans for outreach to those organizations that can help the WIB address the identified community need(s). If applicable include how your WIB will work with intermediary organizations that have existing networks of grassroots organizations.

• Identify up to three businesses or business sectors to collaborate with the WIB, One-Stop System, FBCOs and other partners to provide jobs with long-term career opportunities that will hire qualified employees from the identified disadvantaged census tract(s). The proposal should include letters of commitment from those businesses as attachments. Businesses may include corporations or small-medium sized businesses, which are independently owned and operated and not dominant in their field of operation.

• Describe what resources and services the WIB will solicit from sub-grantees. Resources and services can include life skills, mentoring, adult literacy, employability skill training and customized training. Describe the methodology for competitively selecting sub-recipients. Describe how the FBCO will be used as a strategy for training individuals for the specified businesses/occupations. If you have already done so, include a description of the FBCO resources and describe how existing One-Stop resources will be used to help individuals prepare for, sustain and advance in employment. Please include the estimated percent of funding that will be subawarded to grassroots organizations.

• Describe technical assistance the WIB will provide to all potential sub-grantees in the targeted area(s) before and after grant award. This should include a description of activities to help FBCOs apply for a sub-grant award and activities to help the FBCOs understand guidelines for using with Federal dollars and implement programs. If applicable, WIBs should describe how they would use intermediary organizations or specific staff to conduct the technical assistance.

• Describe how the WIB will develop/facilitate non-financial relationships and resource sharing with grassroots non-profit organizations in the targeted area that did not receive financial subawards.

• Describe the activities the applicant will undertake to build the

administrative capacity of the sub-grantees.

• Document, to the extent possible, the number of individuals from the identified census tract(s) who are currently being served by the One-Stop system. Describe how the grant will increase the number of individuals using services and becoming employed. Describe methodology for documenting how many individuals have been served, become employed and sustain employment during the life of the grant. The proposal should include the number of individuals the WIB plans to see through to employment.

• Submit a letter of endorsement from the State workforce agency and from an elected official who has appointment authority for the WIB.

• Submit a timeline for the tasks and activities beginning July 1, 2004.

Rating Criteria

• The unmet community need(s) and identified census tract(s) have been well documented and substantiated.

• The approaches and strategies for engaging FBCOs to increase employment opportunities for the target population will effectively maximize resources and significantly affect the targeted community.

• The businesses engaged through this grant will provide clear career ladders for the individuals served.

• The activities associated with outreach and identification of FBCOs and other partners eligible for sub-grant awards appear appropriate, reasonable and achievable within the first months of the grant period.

• The defined set of inter-relationships among the WIB, FBCOs, other partners and the local One-Stop delivery system during the life of the grant suggest that the grant objectives will be successfully met.

• The number of individuals the WIB plans to serve seems appropriate, ambitious and achievable within the grant period and represents an effective use of this financial investment. The narrative describes how the WIB's efforts will contribute to the overall goal of helping 2,000 individuals obtain or advance in employment through this investment.

2. Past Performance—20 Points

This section of the narrative describes how the WIB has demonstrated successfully in the past the ability to form working partnerships with FBCOs and other partners. The narrative should include the following.

• Define the structure of the WIB. Narratives should include a description of who is represented on the workforce board, specifically noting what types of FBCOs are represented.

• Describe any current relationships, formal (through MOUs) and informal, with FBCOs. Describe interactions with FBCOs both in terms of financial (training and placement) and non-financial (shared spaces and referrals).

• Relevant history of the WIB in working with small organizations. Include past experience in developing technical assistance and developing other organizations' capacity for social service delivery, competing for grants, managing grants, and conducting information campaigns.

• Recent history of the WIB in working with other community resources like TANF, private foundations, etc., as partners in delivering service.

• Please identify any current barriers that exist that have prevented financial partnerships and non-financial partnership between grassroots faith-based and community organizations in targeted area and the One-Stop system or the Workforce Investment Board. Please describe what actions will be taken to address or remove those barriers in order to allow for sustainable partnerships. In the program plan, describe the strategy for including FBCOs in leadership and strategic planning roles in the WIB. Also, describe the role the Workforce Board staff, One-Stop administrator and staff will have in developing and discharging the plan.

• Recent history of the WIB in working with specific businesses or business sectors to provide employment for qualified individuals.

Rating Criteria

The Department will evaluate this narrative based on the scope, strength, and "record of achievement," and the WIB s commitment to addressing the barriers to partnership with FBCOs.

3. Sustainability (10 Points)

The narrative should describe how the WIB will address issues of sustainability past the life of the DOL grant.

• Describe how the project will be integrated with other WIB inititatives.

• Describe how the WIBs will demonstrate plans for sustainability after the DOL funding ends. Description can include commitments of other resources either within the WIB (*i.e.*, through WIB staff committed to the project, in kind, outreach, training dollars committed, surplus computers donated, etc.) or through an outside source (*i.e.* private partners, foundation, etc).

• Describe efforts, if any, to encourage the leveraging of state discretionary funds to support the project.

Rating Criteria

• The Department will evaluate this narrative based on the strength and level of current commitments.

4. Evaluation (Description of evaluation criteria, measure(s), outcomes and reporting/tracking mechanisms for both WIB and sub-grantees)—30 Points

The narrative should define specifically how the WIB will determine the grant's success based on USDOL guidelines. The narrative should include how the WIB plans to contribute proportionately to the broad goals of the grant investment of helping 2000 individuals obtain or advance employment. The narrative should include the following.

• Define the measurable outcomes and other goals for both the WIB and its sub-recipients in executing the proposed tasks and activities. In addition to any goals the WIB defines, the WIB should include goals for how many individuals will enter employment, percent of retention over a defined period of time defined by the WIB, and increase in wages (advance in employment) through this grant investment. WIB is free to develop additional goals for the increase in literacy and numeracy or entrance into higher education or attainment of GED or educational or training certificate.

• Describe the methodology for how the WIB will support the subawardees to track and report outcomes for those assisted under the sub-awards and what responsibilities for tracking will be shared by the One-Stop Career Centers.

• Define how the WIB will determine its overall success in improving the posture of the sub-recipients in increasing their administrative capacity to remain active in local workforce development and compete for future funding opportunities.

Rating Criteria

• Are the goals and objectives, and the plans and procedures for achieving them, innovative, worthwhile, achievable and measurable?

• Are the methods and activities to achieve the objectives adequately described?

Section IV. Reporting Requirements

The grantee is required to provide the reports and documents listed below:

Quarterly Financial Reports. A Quarterly Financial Status Report (SF–269) is required until such time as all funds have been expended or the period

of availability has expired. Quarterly reports are due 30 days after the end of each calendar year quarter. Grantee must use ETA's On-line Electronic Reporting System.

Progress Reports. The grantee must submit a quarterly financial and narrative progress report to the Federal Project Officer within 30 days following each quarter. Two copies are to be submitted providing a detailed account of activities undertaken during that quarter.

Section V. Review Process and Evaluation Criteria

A technical review panel will make careful evaluation of applications against the rating criteria. The review panel recommendations are advisory. The ETA Grants Officer will fully consider the panel recommendations and take into account geographic balance to ensure the most advantageous award of these funds to accomplish the system-building purposes outlined in the Summary and Statement of work. The grants officer may consider any information that comes to his or her attention. The grants officer reserves the right to award without negotiation.

Section VI. Resources for the Applicant

The Department of Labor maintains a number of Web-based resources that may be of assistance to applicants. The Web page for the Department's Center for Faith-Based & Community Initiatives (*http://www.dol.gov/cfbci*) is a valuable source of background on this initiative. Training and Employment Notice (T.E.N.) 15–03 (*http://wdr.doleta.gov/directive/attach/TEN15–03.html*) includes information about promising practices for engaging faith-based and community organizations in the workforce system based on successful grantees from PY 2002. America's Service Locator (*http://www.servicelocator.org*) provides a directory of our nation's One-Stop Career Centers. The National Association of Workforce Boards maintains a Web page (*http://www.nawb.org/asp/wibdir.asp*) which contains contact information for the State and local Workforce Investment boards. Applicants are encouraged to review "Understanding the Department of Labor Solicitation for Grant Applications and How To Write an Effective Proposal" (*http://www/dol.gov/cfbci/sgabrochure.html*). "Questions and Answers" regarding this solicitation will be posted and updated on the Web (*http://www.doleta.gov/usworkforce*. For a basic understanding of the grants process and basic responsibilities of receiving Federal grant support, please see "Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government (*http://www.fbci.gov*).

Signed at Washington, DC, this 31st day of March, 2004.

James W. Stockton,

Grant Officer.

Attachments

1. SF–424A—Application for Federal Assistance
2. Budget Form
3. Status and Technical Report Formats
4. Survey on Ensuring Equal Opportunity for Applicants

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE Version 7/03

1. TYPE OF SUBMISSION:		**2. DATE SUBMITTED**	Applicant Identifier
Application ☐ Construction ☐ Non-Construction	Pre-application ☐ Construction ☐ Non-Construction	**3. DATE RECEIVED BY STATE**	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
	Department:
Organizational DUNS:	Division:
Address:	Name and telephone number of person to be contacted on matters involving this application (give area code)
Street:	Prefix: First Name:
City:	Middle Name
County:	Last Name
State: Zip Code	Suffix:
Country:	Email:
6. EMPLOYER IDENTIFICATION NUMBER *(EIN):* ☐☐-☐☐☐☐☐☐☐	Phone Number (give area code) Fax Number (give area code)

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)	**7. TYPE OF APPLICANT:** (See back of form for Application Types) Other (specify) **9. NAME OF FEDERAL AGENCY:**
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE (Name of Program): **12. AREAS AFFECTED BY PROJECT** *(Cities, Counties, States, etc.):*	**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**
13. PROPOSED PROJECT Start Date: Ending Date:	**14. CONGRESSIONAL DISTRICTS OF:** a. Applicant b. Project

15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**	
a. Federal	$ .00	a. Yes. ☐	THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE:
b. Applicant	$ .00	b. No. ☐	PROGRAM IS NOT COVERED BY E. O. 12372
c. State	$ .00	☐	OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
d. Local	$ .00		
e. Other	$ .00		
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**	
g. TOTAL	$ .00	☐ Yes If "Yes" attach an explanation.	☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative

Prefix	First Name	Middle Name
Last Name		Suffix
b. Title		c. Telephone Number (give area code)
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:	Item:	Entry:
1.	Select Type of Submission.	11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).	12.	List only the largest political entities affected (e.g., State, counties, cities).
3.	State use only (if applicable).	13	Enter the proposed start date and end date of the project.
4.	Enter Date Received by Federal Agency Federal identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank.	14.	List the applicant's Congressional District and any District(s) affected by the program or project
5.	Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application.	15	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.	16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
7.	Select the appropriate letter in the space provided. A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School District I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) O. Not for Profit Organization	17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
8.	Select the type from the following list: • "New" means a new assistance award. • "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. • "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter: A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration	18	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)
9.	Name of Federal agency from which assistance is being requested with this application.		
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.		

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

OMB No. 1890-0014 Exp. 1/31/2006

Purpose: The Federal government is committed to ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. In order for us to better understand the population of applicants for Federal funds, we are asking nonprofit private organizations (not including private universities) to fill out this survey.

Upon receipt, the survey will be separated from the application. Information provided on the survey will not be considered in any way in making funding decisions and will not be included in the Federal grants database. While your help in this data collection process is greatly appreciated, completion of this survey is voluntary.

Instructions for Submitting the Survey: If you are applying using a hard copy application, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it along with your application package. If you are applying electronically, please submit this survey along with your application.

Applicant's (Organization) Name: _____

Applicant's DUNS Number: _____

Grant Name: _____ **CFDA Number:** _____

1. Does the applicant have 501(c)(3) status?

   ☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ☐ 3 or Fewer ☐ 15-50
   ☐ 4-5 ☐ 51-100
   ☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ☐ Less Than $150,000
   ☐ $150,000 - $299,999
   ☐ $300,000 - $499,999
   ☐ $500,000 - $999,999
   ☐ $1,000,000 - $4,999,999
   ☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

   ☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

   ☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

   ☐ Yes ☐ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

Provide the applicant's (organization) name and DUNS number and the grant name and CFDA number.

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 2202-4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, D.C. 20202-4725

OMB No. 1890-0014 Exp. 1/31/2006

Suggested Guidelines for Workforce Investment Boards Quarterly Reporting, 2003-2005

The Department of Labor looks forward to receiving regular quarterly reports that accurately reflect your progress and accomplishments and which allow both your organizations and the Department to articulate any problem areas or areas for growth for the coming quarter.

Please use these suggested reporting guidelines to submit narrative reports on a quarterly basis. They will be due to your Federal Project Office 30 days following the completion of the quarter: Oct 30th, January 30th, April 30th, and July 30th. The Department of Labor will provide assistance to ensure that each grantee is able to use these reporting guidelines appropriate for the grantee's specific grant project.

Sub-award Process (First Quarter or AS RELEVANT ONLY)
Please include a copy of the competition guidelines (Request for Proposal/Solicitation for Grant Applications) issued for your organization and summarize how it was structured to solicit services.
How did your organization advertise and reach out to grassroots organizations about the availability of grant funds? How did your organization ensure that outreach was broad and effective? What assistance did you offer your organization for the grant-application process? How many grant applications were received? How did your organization ensure that the RFP/SGA was structured in a way that was accessible to grassroots faith-based and community organizations? How did you design the RFP/SGA to ensure that sub-grantees had clear goals that fit into total goals of the project? How did your organization ensure that the grant peer review panels were familiar also with grassroots faith-based and community organizations? (Please note if there were any deviations from the proposal.)

Please note any challenges you had to address in this process.

Service Provision (2nd quarter)
Please restate the total goals (employment, retainment, wage increase and others) for this grant investment and list what services and goals each subgrantee has inside the total goals of the grant.

2nd Quarter Forward
Please submit a chart with what has been accomplished **total goals** for **measurable outcomes for participants** and **services provided for participants** under this grant, including the services and outcomes for each of your sub-grantees. The chart should include the goals for this quarter, what was actually achieved, and the cumulative goals for the year.

The chart should include:

- Specific services provided through each sub-grant/amount of sub-grant;
- Number of participants who received services from sub-grantees;
- Measurable outcome achieved for program participants which include:
    - How many individuals entered employment;
    - How many individuals retained employment [for the amount of time defined by the WIB];
    - How many individuals have increased wages due to services (amount of increase);
    - How many individuals enroll in education and/or training after being served;[1]
    - How many individuals receive an educational certificate;

[1] Education defined as secondary program, post-secondary program, adult basic education programs, and any other organized program of study that leads to a degree or certificate.

- How many individuals increase literacy or numeracy[2]

Additional Information (As is Appropriate):

- In the case of services other than literacy or numeracy, how many participants demonstrated increased knowledge or capabilities in specific skills after services (for example, in resume writing)[3]?
- How many participants worked with mentors this quarter (as applicable to grant proposal) and what was the total/average number of hours mentors/mentees spent together?
- How many individuals served are now using One-Stop core, intensive and training services (e.g. taking classes offered through the One-Stop) who were not using the One-Stop previous to your sub-grantee referral;
- How many individuals were referred to sub-grantee programs by One-Stop?

Demographic Information

- For participants who have received services and/or achieved measurable outcomes this quarter, please indicate the following:**
  - How many are unemployed, how many were employed part time, or how many were on public assistance?
  - Of those who were not employed and are now employed full time, how long were they previously unemployed/on public assistance?
  - How many are ex-offenders? [4]
  - How many have a disability?
  - How many have Limited English Proficiency?
  - How many were older workers, 55 and over?
  - How many were veterans?
  - What is the ethnic background of your participants?
  - How many were single parents?
  - How many are homeless or were homeless until receipt of services?

**Demographic information should be collected throughout the year but only needs to be reported on for the final report. If the demographic information is overly burdensome for a particular subgrantee to collect, the grantee may request a modification from the grant officer.

Use of Resources

In addition to listing the amount of money given to each sub-grantee and the services provided by each sub-grantee for the grant money, please list the in-kind donations or services provided by the sub-grantee to the participants in the program and the value of these donations/services. Please list any other in-kind donations used to match by your organization.

Please discuss the expected cost-effectiveness of your project in terms of the cost per participant compared to the expected benefits for these participants. Your organization might calculate the cost per participant by accounting for the cost per participant in a particular class or the amount invested in individuals receiving a variety of services from your organization. Please provide expected/approximate costs per participant for your sub-grantees.

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[2] Increase in literacy and numeracy must be demonstrated using Standard assessment instrument such as TABE, CASAS, AMES, ABLE.

[3] Please also include how increased ability is measured by your program (pre/post tests etc.)

[4] Has a record of arrest or conviction or is in any stage of criminal justice process.

Workforce System/ Community Collaboration

1) What barriers to partnerships between FBCOs and One-Stops have you identified (cultural, technical, etc)? What actions have you taken to address and remove barriers to partnerships with FBCO between WIBs and One-Stops?
2) What actions have you taken to ensure sub-grantees are collaborating with one another?
3) What other community resources are you helping grantees to connect with in order to address community needs?
4) What barriers to employment have the sub-grantees and One-Stop system been able to remove/ effect by working together (education level, lack of clothing, transportation, childcare together) for participants in programs?

Programmatic and Technical Assistance

1) What programmatic and technical assistance have you provided sub-grantees? What are your goals and measures for assessing the success of the programmatic assistance? Compare your achievements with your goals for delivering technical and programmatic assistance to sub-grantees up to this point.

2) How has your organization worked with the sub-grantees to help them create strategic plans and achieve measurable goals over the course of the year?

3) What tracking mechanisms do your organization and the sub-grantees have that can verify the data that is being reported? What has your organization done to help the sub-grantees establish the appropriate tracking mechanisms in place?

4) What have you done to ensure that your faith-based grantees are educated about the information outlined in **Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government** and the **Legal Rules that Apply to Faith-Based Organizations**?

5) What technical assistance do you request from the Department in the coming quarter? (Last two quarters only: How are you implementing a plan for sustainability beyond the grant period?)

Legal Rules That Apply to Faith-Based Organizations That Receive Government Funds

The government is prohibited from directly funding religious activity. When subgranted, these grants may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious practices. Neutral, secular criteria that neither favor nor disfavor religion must be employed in the selection of grant and sub-grant recipients. In addition, under the WIA and DOL regulations implementing the Workforce Investment Act, a recipient may not train a participant in religious activities, or permit participants to construct, operate, or maintain any part of a facility that is primarily used or devoted to religious instruction or worship. Under WIA, ``no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief."

Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government is available with this document and at www.fbci.gov.

[FR Doc. 04–7659 Filed 4–5–04; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of

information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Employer's First Report of Injury or Occupational Disease (LS–202), Physician's Report of Impairment of Vision (LS–205) and Employer's Supplementary Report of Accident or Occupational Illness (LS–210). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before June 7, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION

I. Background

The Longshore and Harbor Workers' Compensation Act provides benefits to workers injured in maritime employment on the navigable waters of the United States and adjoining area customarily used by an employee in loading, unloading, repairing, or building a vessel. The LS–202 is used by employers initially to report injuries that have occurred which are covered under the Longshore Act and its related statutes. The LS–210 is used to report additional periods of lost time from work. The LS–205 is a medical report based on a comprehensive examination of visual impairment. This information collection is currently approved for use through October 31, 2004.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval of this information collection in order to ensure that employers are complying with the reporting requirements of the Act and to ensure that injured claimants receive all compensation benefits to which they are entitled.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Employer's First Report of Injury or Occupational Disease (LS–202); Physician's Report on Impairment of Vision (LS–205); Employer's Supplementary Report of Accident or Occupational Illness (LS–210).

OMB Number: 1215–0031.

Agency Number: LS–202, LS–205, LS–210.

Affected Public: Individuals or households; Business or other for-profit, Not-for-profit institutions.

Total Respondents: 21,060.

Total Annual responses: 23,220.

Form	Total respondents:	Average time per response	Burden hours
LS–202	21,000	15 minutes	5,250
LS–205	60	45 minutes	45
LS–210	2,160	15 minutes	540
Total	23,220		5,835

Estimated Total Burden Hours: 5,835.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $10,333.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 1, 2004.

Sue Blumenthal,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 04–7743 Filed 4–5–04; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0207(2004)]

Welding, Cutting and Brazing 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 requirement contained in the Welding, Cutting and Brazing Standard (29 CFR

1910.255(e)). The information collected is used by employers and employees whenever welding, cutting and brazing are performed. The purpose of the information is to ensure that employers evaluate hazards associated with welding and ensure that adequate measures are taken to make the process safe.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by June 7, 2004.

Facsimile and electronic transmission: Your comments must be received by June 7, 2004.

ADDRESSES:

I. Submission of Comments

Regular mail, express delivery, hand delivery, and messenger service; Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR 1218–0207(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., e.s.t.

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 1218–0207(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 webpage. 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 that 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 of 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).

29 CFR 1910.255(e) requires that a periodic inspection of resistance welding equipment be made by qualified maintenance personnel, and that a certification record be generated and maintained. The certification shall include the date of the inspection, the signature of the person who performed the inspection and the serial number, or other identifier, for the equipment inspected. The record shall be made available to an OSHA inspector upon request. The maintenance inspection ensures that welding equipment is in safe operating condition while the maintenance record provides evidence to employees and Agency compliance officers that employers performed the required inspections.[1]

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and -transmission techniques.

IV. Proposed Actions

OSHA is proposing to extend the information collection requirement in the Welding, Cutting and Brazing Standard (29 CFR 1910.255(e)). 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 the information collection requirement.

Type of Review: Extension of currently approved information collection requirements.

Title: Welding, Cutting and Brazing Standard (29 CFR 1910.255(e)).

OMB Number: 1218–0207.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 23,490.

Frequency of Recordkeeping: On occasion.

Average Time Per Response: Varies from 1 minute (.02 hour) to maintain the inspection certification record to 7 minutes (.12 hour) to perform the inspection and to generate and maintain the inspection certification record.

Total Annual Hours Requested: 6,588.

Estimated Cost (Operation and Maintenance): $0.

[1] The ICR does not account for the paperwork burden associated with several provisions of the standard either because manufacturers typically provide the required information (*i.e.,* §§ 1910.252(b)(2)(ii)(G), (c)(1)(i)(A), (c)(1)(i)(B), (c)(1)(i)(C), 1910.253(b)(1)(ii), (d)(4)(ii), (d)(4)(ii), (e)(6)(iii), (f)(1)(i), (g)(1)(ii), and 1910.254(b)(4)(iv)); the Agency believes that the paperwork requirement was a usual and customary business practice among the industry prior to publication of the standards (*i.e.,* §§ 1910.252(a)(2)(xiii)(D), (a)(2)(xiv)(D), 1910.253(b)(5)(iii)(G), (c)(3)(v), and (f)(7)(i)A)); or the Agency believes that the implied training provisions are performance-oriented and, therefore, not subject to PRA–95 (*i.e.,* §§ 1910.252(a)(2)(xiii)(C) and 1910.253(a)(4)).

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 65008).

Signed at Washington, DC, on April 1st, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–7740 Filed 4–5–04; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 69 FR 2732, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title: National Science Foundation Grant Proposal Guide.

OMB Control Number: 3145–0058.

Proposed Project: The National Science Foundation Act of 1950 (Pub. L. 81–507) set forth NSF's mission and purpose.

"To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense. * * *"

The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;
- Science and engineering education programs at all levels and in all the various fields of science and engineering;
- Programs that provide a source of information for policy formulations; and
- Other activities to promote these ends.

Over the years, NSF's statutory authority has been modified in a number of significant ways. In 1968, authority to support applied research was added to the Organic Act. In 1980, The Science and Engineering Equal Opportunities Act gave NSF standing authority to support activities to improve the participation of women and minorities in science and engineering.

Another major change occurred in 1986, when engineering was accorded equal status with science in the Organic Act. NSF has always dedicated itself to providing the leadership and vision needed to keep the words and ideas embedded in its mission statement fresh and up-to-date. Even in today's rapidly changing environment, NSF's core purpose resonates clearly in everything it does: promoting achievement and progress in science and engineering and enhancing the potential for research and education to contribute to the Nation. While NSF's vision of the future and the mechanisms it uses to carry out its charges have evolved significantly over the last four decades, its ultimate mission remains the same.

Use of the Information: The regular submission of proposals to the Foundation is part of the collection of information and is used to help NSF fulfilled this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 40,000 proposals annually for new projects, and makes approximately 10,500 new awards. Support is made primarily through grants, contracts, and other agreements awarded to more than 2,000 colleges, universities, academic consortia, nonprofit institutions, and small businesses. The awards are based mainly on evaluations of proposal merit submitted to the Foundation (proposal review is cleared under OMB control No. 3145–0060).

The Foundation has a continuing commitment to monitor the operations of its information collection to identify and address excessive reporting burdens as well as to identify any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s).

Burden on the Public: The Foundation estimates that an average of 120 hours is expended for each proposal submitted. An estimated 40,000 proposals are expected during the course of one year for a total of 4,800,000 public burden hours annually.

Dated: March 31, 2004.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 04–7758 Filed 4–5–04; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal

The National Science Foundation (NSF) management officials having responsibility for the Advisory Committee for Environmental Research and Education (#9487) have determined that renewing this committee for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Effective date for renewal is April 19, 2004. For more information, please contact Susanne Bolton, NSF, at (703) 292–7488.

Dated: April 1, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 04–7755 Filed 4–5–04; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (1755).

Dates: April 28–30, 2004.

Time: 1:30–5:30 p.m. Wednesday, April 28, 2004; 8:30 a.m.–5:30 p.m. Thursday, April 29, 2004; 8:30 a.m.–12 p.m. Friday, April 30, 2004.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Thomas Spence, Directorate for Geosciences, National Science Foundation, Suite 705, 4201 Wilson Boulevard, Arlington, Virginia 22230, Phone 703–292–8500.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

Agenda:

Day 1: Directorate Activity Reports; Education and Diversity Subcommittee Meeting.

Day 2: Division Subcommittee Meeting; Future Directorate Initiatives.

Day 3: Planning and Coordination Activities; Intersessional Activities.

Dated: March 31, 2004.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 04–7757 Filed 4–5–04; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Polar Programs (1130).

Date/Time: May 10, 2004: 8 a.m. to 5 p.m. May 11, 2004: 8 a.m. to 3 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room: 1235 Arlington, VA.

Type of Meeting: Open.

Contact Person: Altie Metcalf, Office of Polar Programs (OPP), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8030.

Minutes: May be obtained from the contact person list above.

Purpose of Meeting: To advise NSF on the impact of its policies , programs and activities on the polar research community; to provide advice to the Director of OPP on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Staff presentations on program updates; discussions of International Polar Year; and planning for 2004 Committee of Visitors.

Dated: March 31, 2004.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 04–7756 Filed 4–5–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of April 5, 12, 19, 26, May 3, 10, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 5, 2004

There are no meetings scheduled for the Week of April 5, 2004.

Week of April 12, 2004—Tentative

Tuesday, April 13, 2004

9:30 a.m. Briefing on Status of Office of Nuclear Regulatory Research (RES) Programs, Performance, and Plans (Public Meeting) (Contact: Alan Levin, 301–415–6656).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of April 19, 2004—Tentative

There are no meetings scheduled for the Week of April 19, 2004.

Week of April 26, 2004—Tentative

Wednesday, April 28, 2004

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1)

Week of May 3, 2004—Tentative

Tuesday, May 4, 2004

9:30 a.m. Briefing on Results of the Agency Action Review Meeting (Public Meeting) (Contact: Bob Pascarelli, 301–415–1245).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Thursday, May 6, 2004

1:30 p.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of May 10, 2004—Tentative

Tuesday, May 11, 2004

9:30 a.m. Briefing on Status of Office of International Programs (OIP) Programs, Performance, and Plans (Public Meeting) (Contact: Ed Baker, 301–415–2344).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

1:30 p.m. Briefing on Threat Environment Assessment (Closed—Ex. 1).

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

ADDITIONAL INFORMATION: By a vote of 3–0 on March 29, the Commission determined pursuant to U.S.C. 552b(e) and section 9.107(a) of the Commission's rules that "Discussion of Management Issues (Closed—Ex. 2)" be held March 29, and on less than one week's notice to the public.

By a vote of 3–0 on March 30, the Commission determined pursuant to U.S.C. 552b(e) and section 9.107(a) of the Commission's rules that "Discussion of Management Issues (Closed—Ex. 2)" be held March 31, and on less than one week's notice to the public.

* * * * *

The NRC Commissison Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer with to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting

schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: April 1, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–7845 Filed 4–2–04; 9:35 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27826]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 31, 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 April 26, 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 April 26, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Alliant Energy Corporation (70–10207)

Notice of Proposal to Amend Articles of Incorporation; Order Authorizing the Solicitation of Proxies

Alliant Energy Corporation ("Alliant Energy"), a registered holding company, 4902 N. Biltmore Lane, Madison, Wisconsin 53718, has filed a declaration ("Declaration") under sections 6(a), 7, and 12(e) of the Act and rules 54, 62, and 65 under the Act.

Alliant Energy requests authority to: (1) Amend its Restated Articles of Incorporation, as amended ("Restated Articles"), to increase the number of authorized shares of common stock that it may issue; and (2) solicit shareholder consents in connection with that proposed amendment ("Proxy Solicitation") for use at its annual shareholders' meeting ("Annual Meeting"), which is scheduled to take place May 21, 2004.

Alliant Energy is authorized under its Restated Articles to issue 200 million shares of common stock, $0.01 par value per share. Currently, there are only 21,004,131 authorized shares of Alliant Energy available for issuance for future business purposes.[1] Alliant Energy's board of directors has approved for submission to its shareowners at its 2004 Annual Meeting an amendment to the Restated Articles that would increase the number of authorized shares of common stock from 200,000,000 to 240,000,000.

Alliant Energy anticipates that it will require in the future a greater number of authorized shares of common stock than is currently available under its Restated Articles to issue new equity to fund its capital expenditure program, including its recently announced domestic regulated generation build-out program. By this Declaration, Alliant Energy is not requesting any new or additional financing authority.

For the proposed amendment to the Restated Articles to be approved, the number of shareholder votes cast in favor of the proposal must exceed the number of votes cast against it at the Annual Meeting.

Alliant Energy has requested that an order be issued authorizing commencement of the Proxy Solicitation. It appears that, regarding the Proxy Solicitation, the Declaration should be permitted to become effective immediately under rule 62(d).

The proposed transaction is subject to rule 54 under the Act. Rule 54 provides that, in determining whether to approve any transaction that does not relate to an "exempt wholesale generator" ("EWG") or "foreign utility company" ("FUCO"), as defined in sections 32 and 33, respectively, the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an EWG or FUCO upon the registered holding company system if paragraphs (a), (b) and (c) of rule 53 are satisfied.

Currently, Alliant Energy does not meet all of the conditions of rule 53(a). As of December 31, 2003, Alliant Energy's "aggregate investment," as defined in rule 53(a)(1), in EWGs and FUCOs was approximately $517.5 million, or approximately sixty-six percent of Alliant Energy's average "consolidated retained earnings," also as defined in rule 53(a)(1), for the four quarters ended December 31, 2003 ($784.6 million). Although this exceeds the 50% "safe harbor" limitation contained in rule 53(a), it is within the investment limit previously authorized by the Commission. See Holding Company Act Release No. 27448 (October 3, 2001) ("EWG/FUCO Order") (authorizing Alliant Energy to increase its "aggregate investment" in EWGs and FUCOs to an amount equal to 100% of its average consolidated retained earnings). Alliant Energy satisfies all of the other conditions of paragraphs (a) and (b) of rule 53, and none of the adverse conditions specified in rule 53(b) exist.

Since September 30, 2001, the end of the quarterly period immediately preceding the issuance of the EWG/FUCO Order, Alliant Energy has experienced an increase in consolidated common stock equity.[2] Alliant Energy states that the proposed transactions will have no impact on its consolidated capitalization.

With regard to earnings attributable to its investments in EWGs and FUCOs, Alliant has experienced losses from its portfolio of FUCOs in calendar years 2000, 2001 2002, and 2003 ($17.7 million, $25.3 million, and $26.7 million, respectively). The company's losses on its Brazil investments were unexpectedly large in 2002, resulting primarily from the impact of a decline in currency translation rates, as well as from charges related to recovery of the impacts of electricity rationing in Brazil and other prior costs. Since then, energy demand has increased and several rate increases have been approved. In fiscal year 2003, Alliant Energy's FUCO

[1] As of December 31, 2003, 110,962,910 shares of its common stock were issued and outstanding. In addition, Alliant energy reserved, as of December 31, 2003, the following number of shares for the purposes specified: 1,914,047 shares were reserved for issuance under the company's Shareowner Direct Plan; 2,433,182 shares were reserved for issuance under the company's Long-Term Equity Incentive Plan; 3,800,000 shares were reserved for issuance under the company's 2002 Equity Incentive Plan; 220,440 shares were reserved for issuance under the company's 401(k) Plan; and 59,665,290 shares were reserved for issuance under the company's Rights Agreement.

[2] As of December 31, 2003, Alliant Energy's consolidated capitalization consisted of 47.5% common equity, 4.9% preferred stock, 43.6% long-term debt (including variable rate demand bonds classified as current), and 4.0% short-term debt (including current maturities of long-term debt); as of September 30, 2001, its consolidated capitalization consisted of 36.3% common equity, 2.6% preferred stock, 51.2% long-term debt (including variable rate demand bonds classified as current), and 9.9% short-term debt (including current maturities of long-term debt).

investments generated approximately $3.8 million in income (not including gain from sale of Australian FUCO investments).

The fees, commissions and expenses incurred or to be incurred by Alliant Energy in connection with the proposed transactions, including the Proxy Solicitation, are estimated not to exceed $21,000.

No state commission, and no federal commission, other than this Commission, has jurisdiction over the proposed Proxy Solicitation.

It Is Ordered, under rule 62 under the Act, that, with respect to the Proxy Solicitation, the Declaration is permitted to become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7689 Filed 4–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–03552]

Issuer Delisting; Notice of Application of Scope Industries To Withdraw its Common Stock, No Par Value, From Listing and Registration on the American Stock Exchange LLC

March 31, 2004.

Scope Industries, a California corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on March 17, 2004 to withdraw the Issuer's Security from listing and registration on the Amex and to seek quotation of the Security on OTC Pink Sheets ("OTC") by a market maker. The Board of the Issuer states that the reasons for delisting its Security from the Amex are as follows: (i) As of December 31, 2003, the number of record holders of the Issuer's Security has declined to approximately 70 with approximately 70% of the outstanding Security being held by officers and members of the Board or their immediate families; (ii) in the quarter ending December 31, 2003, the average daily trading volume in the Security on the Amex declined to approximately 150 shares per day; (iii) the Board has become increasingly concerned with the increasing costs (as opposed to the benefits) associated with maintaining the Amex listing to support such an inactive trading market for the Security including, without limitation, the costs associated with compliance with the rules promulgated by Commission; (iv) the Board believes that an adequate market for those persons who want to buy or sell the Issuer's Security will develop in the OTC market; and (v) overall, the Board believes it would be in the best interest of the Issuer and its shareholders to withdraw the Security from listing on the Amex and to take steps to cooperate with the establishment of an OTC market for its Security.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of California, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under section 12(b) of the Act[3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before April 21, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters should refer to File No. 1–03552. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–7690 Filed 4–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49511; File No. S7–10–04]

Regulation NMS

AGENCY: Securities and Exchange Commission.

ACTION: Change in hearing schedule.

SUMMARY: The Commission has changed the schedule for its hearings on proposed Regulation NMS.

DATES: The Commission will hold a public hearing on Regulation NMS on April 21, 2004 in New York, New York. Subsequent hearings will be scheduled as needed.

ADDRESSES: The April 21, 2004 public hearing will be held at the InterContinental The Barclay New York at 111 East 48th Street, New York, NY 10017. Persons submitting requests to appear or written testimony in lieu of testifying should file three copies of the request or testimony with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20459–0609. Persons requesting to appear should also submit three copies of their oral statement or summary of their testimony to the same address. Persons who previously submitted a request to testify need not resubmit a request. Requests to appear and copies of oral statements or summaries of intended testimony may be filed electronically at the following e-mail address: *rule-comments@sec.gov.* The words "Request to Testify" should be clearly noted on the subject line of the request. All requests and other submissions also should refer to File No. S7–10–04. Copies of all requests and other submissions and transcripts of the hearings will be available for public inspection and copying in the Commission's Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549. All submitted requests and other materials will be posted on the Commission's Internet Web site (*http://www.sec.gov*). We do not edit personal information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Sapna C. Patel, Special Counsel, Office

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

of Market Supervision, Division of Market Regulation, at (202) 942–0166, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Hearing

On February 26, 2004, the Securities and Exchange Commission (the "Commission") approved for publication proposed Regulation NMS (the "Proposing Release"), which is designed to enhance and modernize the regulatory structure of the U.S. equity markets (Securities Exchange Act Release No. 34–49325). In connection with the Proposing Release, the Commission determined to hold public hearings to give the Commission the benefit of the views of interested members of the public regarding the issues raised and questions posed in the Proposing Release.

The Commission had originally scheduled two hearings, one in Washington, DC, and the other in New York, NY. In response to our previous notice, the large majority of participants preferred to testify on April 21, 2004 in New York, in light of the complexity of issues raised in Regulation NMS and their preference for the New York location. To ensure as full a consideration and discussion of the issues as possible, the Commission will hold its first hearing on April 21, 2004 in New York. Subsequent hearings will be scheduled as needed. The Commission also is extending the period for requesting to testify until April 9, 2004.

II. Procedures for Hearing

Persons who wish to testify at the April 21, 2004 hearing must submit a written request to the Commission by April 9, 2004. Persons requesting to testify must also submit three copies of their oral statements or a summary of their intended testimony to the Commission by April 12, 2004. Those who do not wish to appear at the hearings may submit written testimony on or before the end of the comment period for the Proposing Release, which is 75 days after publication of the Proposing Release in the **Federal Register** (May 24, 2004), for inclusion in the public comment file. The Commission will publish a schedule of appearances on or about April 16, 2004. Based on the number of requests received, the Commission may not be able to accommodate all requests.

The hearing will begin at 9 a.m. The hearing will be broadcast live and access will be available via webcast on the Commission's Web site at *http://www.sec.gov*. The Commission may limit the time for formal presentations or group presentations into a series of panels. Time will be reserved for members of the Commission and Commission staff to pose questions to each witness concerning his or her testimony as well as other matters pertaining to the Proposing Release. The Commission has designated Jonathan G. Katz, Secretary of the Commission, as the hearing officer.

Dated: March 31, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7789 Filed 4–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45906; File No. SR–PCX–2004–22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Amending PCXE Rule 7.31 to Create a New Order Type Entitled "Auto Q Order"

March 30, 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 March 19, 2004 the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PCX. On March 29, 2004, the Commission received 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 the Substance of the Proposed Rule Change

PCX proposes to amend its rules governing the Archipelago Exchange, the equities trading facility of PCX Equities, Inc. ("PCXE"), by adding an automatic updating feature ("Auto Q Order") that will enable Q orders to be refreshed automatically based upon market maker determined parameters.

The text of the proposed rule change appears below. Proposed new language is in italics. Proposed deletions are in [brackets].

* * * * *

Rule 7.31. Orders and Modifiers

(k) Q Order.

(1) A Q Order is a [A] limit order submitted to the Archipelago Exchange by a Market Maker. A Q Order may not be a Working Order.

(2) Auto Q Order. A Q Order may be designated as an Auto Q Order that would automatically repost a Q Order after an execution in the ArcaEx book at a designated increment inferior to the price determined by the Market Maker and for the same amount of shares. The Auto Q order would continue to repost in the ArcaEx book pursuant to Rule 7.36 upon execution at the determined increment and size until the total tradable size threshold is reached. When entering an Auto Q Order, a Market Maker would establish the following parameters: (i) price; (ii) size; (iii) buy or sell; (iv) increment update; and (v) total tradable size.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its continuing efforts to enhance participation on the Archipelago Exchange ("ArcaEx") facility, PCX is proposing to implement a new functionality type that would enable Market Makers [4] to automatically update their Q Orders.[5] The Exchange

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mai S. Shiver, Acting Director and Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated March 26, 2004 ("Amendment No. 1"). Amendment No. 1 superseded and replaced the original rule filing in its entirety.

[4] PCXE Rule 1.1(u) defines Market Maker as an ETP Holder that acts as a Market Maker pursuant to PCXE Rule 7.

[5] *See* PCXE Rule 7.31 (defining "Q Orders" as limit orders that are submitted to ArcaEx by Market Makers) and 7.34 (specifying Market Makers' obligations to enter Q Orders).

proposes to add an automatic updating feature called "Auto Q" that would automatically repost a Q Order in the ArcaEx book, after an execution, at a designated increment inferior to the price determined by the Market Maker and for the same amount of shares. The Auto Q Order would continue to repost in the ArcaEx book, after an execution, at the determined increment and size until the total tradable size threshold is reached.

When entering an Auto Q Order, a Market Maker would establish the following parameters: (i) price; (ii) size; (iii) buy or sell; (iv) increment update; and (v) total tradable size.

For example, (1) NBBO is 30.00 × 30.10.

(2) Market Maker enters an Auto Q Order buy 500 shares at 30.05 with an increment of .02 and total tradable size 2000.

(3) NBBO becomes 30.05 × 30.10.

(4) Inbound market sell order comes into ArcaEx for 1000 shares.

(5) Market sell executes against 30.05 for 500 shares.

(6) Auto Q Order updates to buy 500 shares at 30.03.

(7) Assuming there are no other superior priced bids, ArcaEx executes the remaining portion of the market sell order at 30.03.

(8) Auto Q Order would update to 30.01 for 500 shares. Reposting would occur until maximum of 2000 shares in the aggregate had been executed against the Auto Q Order.

Auto Q Orders will be governed by the price, time priority rules and order execution rules established in PCXE Rules 7.36 and 7.37. For example, superior priced displayed orders would be executed prior to Auto Q Orders and Auto Q Orders will not have precedence over same-priced displayed orders that are superior in time. Each reposted Auto Q Order would be assigned a new price, time priority as of the time of each reposting.[6] Further, Auto Q Orders that are reposted at the same price as a non-displayed order would take precedence in accordance with PCXE Rule 7.36.

The Exchange believes that the implementation of the aforementioned order type will facilitate enhanced order interaction and foster price competition. The Exchange believes that the proposal promotes a more efficient and effective market operation, and enhances the investment choices available to investors over a broad range of trading scenarios. The Exchange also believes that the proposed rule change will permit increased execution opportunities of Market Maker orders.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[8] of the Act, in general, and further the objectives of Section 6(b)(5),[9] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with Section 11A(a)(1)(B) of the Act, which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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–PCX–2004–22. 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 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 PCX.

All submissions should refer to file number SR–PCX–2004–22 and should be submitted by April 27, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7691 Filed 4–5–04; 8:45 am]

BILLING CODE 8010–01–P

[6] Telephone call between Tania J.C. Blanford, Staff Attorney, Regulatory Policy Department, PCX, and Leah Mesfin, Attorney, Division, Commission on March 30, 2004.

[7] Telephone call between Tania J.C. Blanford, Staff Attorney, Regulatory Policy Department, PCX; Bridget Farrell, Regulatory Analyst, Archipelago Holdings, LLC; and Leah Mesfin, Attorney, Division, Commission on March 30, 2004.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

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 extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 11, 2003, pages 47628–47629.

DATES: Comments must be submitted on or before May 6, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Pilot Records Improvement Act of 1996.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0607.

Form(s): FAA Forms 8060–10, 8060–10A, 8060–11, 8060–11A, Authorization for Release of DOT Drug and Alcohol Testing Records.

Affected Public: A total of 16,514 pilots.

Abstract: Title 49 USC Section 4436(f) mandates that airlines must obtain safety records of prospective employees from the FAA and from previous employers.

Estimated Annual Burden Hours: An estimated 41,741 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA 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 estimates 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.

Issued in Washington, DC on March 29, 2004.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 04–7682 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

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 extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 17, 2004, page 70861.

DATES: Comments must be submitted on or before May 6, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: FAA Flight Standards Customer Satisfaction Survey.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0568.

Forms(s): NA.

Affected Public: A total of 5,400 pilots.

Abstract: The FAA has initiated customer service surveys throughout the agency, requiring that every element have contact with their customers to assure that their needs are being met and that service is improved. At the request of the FAA, the Flight Standards office (AFS) is planning to conduct a targeted survey of general aviation pilots to measure the change in their use of and satisfaction with the FAA-sponsored Safety Seminar Program.

Estimated Annual Burden Hours: An estimated 585 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA 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 estimates 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.

Issued in Washington, DC, on March 29, 2004.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 04–7683 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: Louis Armstrong New Orleans International Airport, New Orleans, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The FAA is issuing this notice to advise the public that the FAA has revised the Purpose and Need for the Environmental Impact Statement (EIS) currently being prepared and considered for a proposed new air carrier runway and a taxiway conversion to a general aviation runway at Louis Armstrong New Orleans International Airport, New Orleans, Louisiana.

The original purpose of the proposed new air carrier runway project was provided in a Notice of Intent published in the **Federal Register** on November 28, 2000, stating the existing north-south Runway 1/19 does not provide full instrument capabilities, nor is it feasible to expand the runway to meet design standards to provide these capabilities because of its proximity to Airport Access Road and the Interstate 10 overpass. While the proposed runway is to provide the capacity to meet near-term forecast peak-period demands when the airport is experiencing low visibility, it would also provide capacity to meet longer-term demands during all

weather conditions. Some of the alternatives considered are the no action, north/south parallel to existing Runway 1/19, as well as an 8 degree canted north/south alignment. Also included in the alternatives analysis will be the consideration of a proposed new Regional airport. The revised purpose and need for the proposed new air carrier runway is to provide the City of New Orleans and the New Orleans Aviation Board with the long-term option of taking steps necessary to protect a site for a new air carrier runway.

The purpose and need for the taxiway conversion to a general aviation runway, as reported in the Federal Register on November 28, 2000, has not changed. The conversion of the east-west Taxiway G to a runway is intended to serve general aviation (GA) aircraft using the recently constructed northside facilities, allowing air traffic controller separation of lower-speed GA aircraft from higher performance aircraft. The alternatives being considered are the no action; the proposed taxiway to runway conversion, and others that will be identified in the EIS study.

FOR FURTHER INFORMATION CONTACT: Joyce M. Porter, Environmental Specialist, Federal Aviation Administration, Southwest Regional Office, Fort Worth, Texas 76193–0640. Telephone (817) 222–5640.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the City of New Orleans and the New Orleans Aviation Board, will prepare an EIS for the proposed projects. The City of New Orleans and the New Orleans Aviation Board propose to construct a new air carrier runway, 8,000 ft. long and 150 ft wide, and its associated taxiways when the operational forecasts at the airport demonstrate the need for such a runway. The conversion of an east/west taxiway into a parallel Visual Flight Rule general aviation runway, 6,731 ft long and 100 ft. wide, and construction of a new parallel taxiway; and redesignate the existing runway 6/24 to a taxiway is determined to be needed in the near-term. The FAA intends to provide notification of the revised purpose and need to the public, interested parties, and Federal, state, and local agencies through the EIS Web site, the EIS Newsletter, this revised NOI, and through notices placed in local newspapers. Any additional comments can be mailed to the attention of Joyce M. Porter at the above address.

Issued on: March 23, 2004.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 04–7685 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Raleigh-Durham International Airport, Raleigh, NC

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 the revenue from a PFC at Raleigh-Durham International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 6, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to John C. Brantley, III, Airport Director, of the Raleigh-Durham Airport Authority at the following address: 1000 Trade Drive, Post Office Box 80001, Raleigh, NC 27623.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Raleigh-Durham Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Tracie D. Kleine, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue Suite 2–260, College Park, Georgia 30337, (404) 305–7148. 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 to impose and use the revenue from a PFC at Raleigh-Durham International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 25, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Raleigh-Durham Airport Authority 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 26, 2004.

The following is a brief overview of the application.

PFC Application No.: 04–02–C–00–RDU.

Level of the proposed PFC: $4.50.

Proposed charge effective date: October 1, 2004.

Proposed charge expiration date: August 1, 2028.

Total estimated net PFC revenue: $595,223,253.

Brief description of proposed project(s):

Impose and Use:

- Terminal C Renovation and Expansion Project
- PFC Application Development

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-Scheduled/On-Demand Air Carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Raleigh-Durham Airport Authority.

Issued in College Park, Georgia, on March 25, 2004.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 04–7686 Filed 4–5–04; 8:45 am]

BILLING CODE 4310–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–09–C–00–CRW To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Yeager Airport, Charleston, WV

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 the revenue from a PFC at Yeager Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 6, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Beckley Airports District Office, 176 Airport Circle, Room 101, Beaver, West Virginia 25813.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard Atkinson, Director of Aviation of the Central West Virginia Regional Airport Authority at the following address: 100 Airport Road, Suite 175, Charleston, West Virginia 25311–1080.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Central West Virginia Regional Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Larry F. Clark, Manager, Airports District Office, 176 Airport Circle, Room 101, Beaver, West Virginia 25813, (304) 252–6216. 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 to impose and use the revenue from a PFC at Yeager Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 19, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Central West Virginia Regional Airport Authority 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 than June 14, 2004.

The following is a brief overview of the application.

PFC Application No.: 04–09–C–00–CRW.

Level of the proposed PFC: $4.50.

Proposed charge effective date: February 1, 2006.

Proposed charge expiration date: March 1, 2011.

Total estimated PFC revenue: $6,426,159.

Brief description of proposed project(s):

—Runway 5 Safety Area Improvements
—Runway 23 Safety Area Improvements
—Airport Drainage Project
—Acquire Loading Bridges for Gates A, B & C–4
—Acquire Security Vehicle
—Main Terminal Building Emergency Generator
—Main Terminal Building Fire Suppression System
—Main Terminal Building Expansion at Gate 10
—Acquire Loading Bridges for Gate 10
—Runway 15/33 Seal Coat
—General Aviation Apron Seal Coat
—Environmental Assessments for Runway 05 Protection Zone (RPZ) Land Acquisition and Obstruction Removal
—Acquire Snow Removal Equipment (2 Plows with Spreaders)
—Acquire Snow Removal Equipment (Broom)
—Runway 05 Obstruction Removal
—Runway 05 Protection Zone (RPZ) Land Acquisition
—Rehabilitate Taxiways A & B
—Alternate Project: Main Terminal Canopy and Walkway

Class or classes of air carriers which the public agency has requested not be required to collect PFCs:

—Under FAR Part 135—Charter Operators for hire to the general public
—Under FAR Part 121—Unscheduled Charter Operators for hire to the general public
—Non-signatory and non-scheduled Air Carriers

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: 1 Aviation Plaza, Airports Division, AEA–610, Jamaica, New York 11434.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Central West Virginia Regional Airport Authority.

Issued in Beckley, West Virginia, on March 24, 2004.

Larry F. Clark,

Manager, Beckley ADO, Eastern Region.

[FR Doc. 04–7684 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of Environmental Impact Statement for the San Francisco Bay Area Rapid Transit District (BART) Warm Springs Extension Project in the City of Fremont, located in Alameda County, CA

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration, as lead agency, and the San Francisco Bay Area Rapid Transit District (BART) intend to jointly prepare an Environmental Impact Statement on a proposal by BART to extend its existing 91-mile rail network an additional 5.4 miles from the existing Fremont BART Station to a new station in the Warm Springs district of Fremont. An optional station at Irvington is also being considered. The EIS will be prepared to satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA). An Environmental Impact Report (EIR) and Supplemental Environmental Impact Report (SEIR) were previously prepared for this project by BART in accordance with the California Environmental Quality Act (CEQA). The proposed project was selected as the preferred alternative by the BART Board of Directors following completion and certification of the CEQA SEIR in June 2003. The CEQA EIR and SEIR are available for review as described in **ADDRESSES** below. FTA and BART seek public and interagency input on the scope of the NEPA EIS for the project, including the alternatives to be considered and the environmental impacts to be evaluated.

DATES: Scoping Comments Due Date: Written comments on the scope of the NEPA review, including the alternatives to be considered and the related impacts to be assessed, should be received no later than May 17, 2004. Written comments should be sent to the BART Project Manager at the address given below in **ADDRESSES**.

Scoping Meeting Dates: A public scoping meeting and open house will be held at 7 p.m. on April 28, 2004 at the Fremont Main Library, located at 2400 Stevenson Boulevard, in the City of Fremont. Oral and written comments may be given at the scoping meeting, and a stenographer will record oral comments. The formal scoping meeting will be preceded by an open house from 6:30 pm to 7 pm allowing the public to

discuss the EIS scope and proposed project informally with BART staff. The meeting location is accessible to people with disabilities. Persons with special needs should call BART at (510) 476–3900 at least 72 hours prior to the scoping meeting.

ADDRESSES: Written comments should be sent to San Francisco Bay Area Rapid Transit District, Attention: Ms. Shari Adams, Warm Springs Group Manager, P.O. Box 12688, MS LKS–21, Oakland, CA 94604–2688. Phone: (510) 476–3900. Fax: (510) 287–4747. Email: *rbatars@bart.gov*. If you wish to be placed on the mailing list to receive further information as the EIS study develops, contact Ms. Adams at the address listed above. Please specify the mailing list for the WSX EIS (Warm Springs Extension Project Environmental Impact Statement). Copies of the EIR and SEIR can also be obtained by contacting Ms. Adams as indicated above.

FOR FURTHER INFORMATION CONTACT: Ms. Lorraine Lerman, Community Planner, FTA Region IX, 201 Mission Street, Suite 2210, San Francisco, CA 94105. Phone: (415) 744–2735. Fax: (415) 744–2726. Information about the project can also be obtained from the BART Web site, *http://www.bart.gov/wsx*.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and BART invite all interested individuals and organizations, and federal, state, and local agencies to comment on the scope of the EIS. During the scoping process, comments should focus on proposing alternatives that may be less costly or have less environmental impacts while achieving similar transportation objectives, and on identifying specific social, economic, or environmental issues to be evaluated. At this time, comments should not focus on a preference for a particular alternative. As part of the public participation process, the study website referenced above will be periodically updated to reflect the project's current status. Additional opportunities for public participation will be announced through mailings, notices, advertisements, and press releases.

The project was originally advanced by BART as a State-funded and locally funded project without FTA involvement. At that time, BART prepared the CEQA EIR and SEIR and the BART Board of Directors selected a preferred alternative. Recent changes in State transportation funding priorities have resulted in BART's seeking FTA funding for the project. FTA is, therefore, preparing an EIS, but plans to incorporate by reference the CEQA EIR and SEIR. FTA does not intend to consider in detail alternatives that were evaluated during the CEQA process and found not to satisfactorily meet the project's purpose and need. At the same time, FTA intends that this EIS not be merely a ratification of decisions already made. FTA therefore seeks comments during scoping, on the alternatives to be considered in the EIS, in light of the analyses and coordination activities performed by BART and publicized prior to FTA involvement. FTA must also comply with other environmental requirements, such as Section 4(f) of the Department of Transportation Act (49 U.S.C. 303) and Section 106 of the National Historic Preservation Act, that apply only to Federal actions.

II. Description of Study Area

The FTA, as lead agency, in cooperation with the BART District, will prepare an EIS on a proposal to extend BART's rail service from the existing Fremont Station to a new station in the Warm Springs district of Fremont. An optional station at Irvington is also being considered. The project would be located entirely within the City of Fremont. Located in the East Bay region of the San Francisco Bay Area, Fremont is the southernmost city in Alameda County. Fremont is bounded by the cities of Hayward and Union City on the north, San Francisco Bay to the west, the foothills and mountains of the Diablo Range to the east, and the City of Milpitas and Santa Clara County on the south.

The alignment of the proposed BART extension would generally parallel portions of the Union Pacific Railroad (UP) corridor, which lies between Interstate 680 to the east and Interstate 880 to the west. The project study area includes the location of the proposed rail alignment, stations, auxiliary facilities, and a maintenance facility.

III. Purpose and Need

Transportation has become a critical issue for people living and working in the southern Alameda County and northern Santa Clara County. The surge in population, including nearly a 20 percent population increase over the past decade in the City of Fremont, has increased traffic on regional roadways. Highway improvements have not kept up with the demand for more highway capacity. Congestion on Interstate 680 and Interstate 880, the two major regional roadways linking Santa Clara, Alameda, and Contra Costa Counties, has worsened considerably over the last decade, and escalating traffic volumes have reached levels considered unacceptable by the California Department of Transportation and other regional monitoring agencies.

The proposed 5.4-mile BART extension to the Warm Springs district of Fremont, would improve the regional transit network by enhancing the link between the southern Alameda County-northern Santa Clara County area and the rest of the East Bay, and San Francisco. By shortening travel times and improving reliability, the BART extension is expected to generate additional transit ridership and reduce overall traffic congestion. The Warm Springs Extension would help accommodate projected future growth in employment and population, reduce pressure to expand roads, and support the region's efforts to meet state and federal air quality standards.

IV. Alternatives

In light of prior CEQA studies by BART, FTA intends to evaluate the following two alternatives in detail in the EIS:

1. The No-Build Alternative, which consists of the planned highway and transit systems expected to be in place in the design years 2010 and 2025 if the project is not built. The future No-Build Alternative is based on the Metropolitan Transportation Commission's long-range transportation plan for the area and includes programmed improvements in bus service.

2. BART Warm Springs Extension, the locally preferred alternative selected by the BART Board of Directors at the conclusion of the SEIR process, consists of a 5.4-mile BART extension from the existing Fremont Station to a proposed station in the Warm Springs district of Fremont, with an optional station at Irvington. The proposed project alignment would generally parallel portions of the UP railroad corridor through Fremont, between Interstate 680 to the east and Interstate 880 to the west. This route reflects a revised alignment designed following the 1992 EIR. The revisions were made in order to reduce project impacts, and the revised project was the subject of the 2003 SEIR. Chief among the project revisions is the proposed subway under Fremont Central Park; an alignment segment previously planned as an aerial structure.

The initial segment of the alignment would begin on an embankment at the south end of the existing elevated Fremont BART Station. The alignment would pass over Walnut Avenue on an aerial structure and descend into a cut-and-cover subway north of Stevenson

Boulevard. The alignment would continue southward in subway under Fremont Central Park and the eastern arm of Lake Elizabeth and surface to grade between the eastern and western alignments of the UP corridor. The BART alignment would pass over Paseo Padre Parkway, which would be a vehicular underpass, on a bridge structure. The alignment would then continue southward at grade, passing under Washington Boulevard, which would be a vehicular overpass. From Washington Boulevard, the proposed project alignment would continue south at grade along UP's former eastern alignment to a terminus station in the southeast quadrant of Warm Springs Road and Grimmer Boulevard.

The optional Irvington Station, if constructed, would be located on the south side of Washington Boulevard, east and west of Osgood Road. Auxiliary wayside facilities would be placed periodically along the proposed alignment and would include electrical substations, gap breaker stations, train control and communications facilities, and pumping and emergency access facilities. Two subway ventilation structures may be required in Fremont Central Park, if feasible and prudent avoidance options cannot be developed. A rail vehicle maintenance facility is proposed immediately south of the Warm Springs Station site between the UP eastern alignment and Warm Springs Court.

If additional reasonable alternatives are identified through the scoping process, they will be evaluated in the EIS.

V. Probable Effects

The EIS will evaluate and fully disclose the environmental consequences of building and operating the proposed BART extension in advance of any decision by FTA to commit financial or other resources toward the implementation of a particular alternative. The EIS will examine the transportation benefits and environmental impacts of the alternatives. In addition, it will discuss actions to reduce or eliminate such impacts. Information on preliminary engineering of the rail alignment, stations, auxiliary facilities, and a maintenance facility will be included in the EIS. In addition, a section on financial considerations will be provided that identifies capital and operating costs and funding sources.

Environmental issues to be analyzed in the EIS include: transportation and traffic impacts, including changes in intersection and roadway levels of service; the use of parkland, including Fremont Central Park; biological resources and sensitive species; land use, including consistency of proposed stations with local plans and policies; potential impacts to historic and cultural resources; noise and vibration impacts on homes and other sensitive receptors near the tracks. Cumulative and growth-inducing impacts will be examined. Impacts will be evaluated for both the temporary construction period and for the long-term operation of the alternatives. Measures to mitigate any adverse impacts will be identified.

To ensure that all significant issues related to this proposed action are identified and addressed, scoping comments and suggestions are invited from all interested parties. Comments should be directed to the BART Warm Springs Extension Group Manager as noted in the **ADDRESSES** section above.

VI. FTA Procedures

The EIS is being prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), its implementing regulations by the Council on Environmental Quality (40 CFR parts 1500–1508), and with the FTA/Federal Highway Administration's "Environmental Impact and Related Procedures" (23 CFR part 771). In accordance with FTA policy, the NEPA process will also address the requirements of other applicable environmental laws, regulations, and executive orders, such as the National Historic Preservation Act of 1966, Section 4(f) of the U.S. Department of Transportation Act, and Executive Orders on Environmental Stewardship and Transportation Infrastructure Project Reviews, Environmental Justice, Floodplain Management, and Protection of Wetlands.

The SEIR that resulted in the BART Board of Directors' selection of the proposed project as its preferred alternative was issued in 2003. To streamline the NEPA process and to avoid duplication of effort, FTA and BART will consider and incorporate into the EIS the results of previous studies, including the EIR and SEIR.

Upon completion, the Draft EIS will be distributed for public and agency review and comment. A public hearing on the Draft EIS will be held within the study area. Based on the Draft EIS and the public and agency comments received, FTA and BART may further refine and analyze the alternatives in the Final EIS.

Issued on: March 30, 2004.

Leslie T. Rogers,

Regional Administrator.

[FR Doc. 04–7681 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent to transfer Federally Assisted Land or Facility.

SUMMARY: Section 5334(g) of the Federal Transit Laws, as codified, 49 U.S.C. 5301, *et seq.*, permits the Administrator of the Federal Transit Administration (FTA) to authority a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal government, if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this notice to advise Federal agencies that the City of Montgomery, Alabama intends to transfer the Federal interest in approximately 0.35 acres of land and improvements thereon at 335 Coosa Street, Montgomery, Alabama. The City of Montgomery intends to repair and modify the silo complex for use as a satellite police station.

DATES: Any Federal agency interested in acquiring the asset must notify the FTA Region 4 Office of its interest by May 6, 2004.

ADDRESSES: Interested parties should notify the Regional office by writing to Hiram J. Walker, Regional Administrator, Federal Transit Administration, 61 Forsyth Street, Suite 17T50, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Tom McCormick, FTA Region 4 Director of Operations and Program Management at 404–562–3522 or FTA Headquarters Office of Program Management at 202–366–6106.

SUPPLEMENTARY INFORMATION:

Background: 49 U.S.C. 5334(g) provides guidance on the transfer of capital assts. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local government authority to be used for a public purpose with no further obligation to the Government.

49 U.S.C. 5334(g)(1) Determinations

The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

(A) The asset will remain in public use for at least 5 years after the date the asset should be used;

(B) there is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) the overall benefit of allowing the transfer is greater than the interest of the government in liquidation and return of the financial interest of the government in the asset, after considering fair market value and other factors, and

(D) through an appropriate screening or survey process, that there is no interest in acquiring the asset for government use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. 5334(g)(1)(D) of the Federal Transit Laws. Accordingly, FTA hereby provides notice of the availability of the assets further described below. Any Federal agency interested in acquiring the asset should promptly notify the FTA. If no Federal agency is interested in acquiring the asset, FTA will make certain that the other requirements specified in 49 U.S.C. 5334(g)(1)(a) through (c) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

The property is located at 335 Coosa Street, Montgomery, Alabama and contains approximately 0.35 acres of land and a building. The property was originally built as a silo complex at least 50 years ago. In 1991, the complex was renovated to serve as an Amtrak station. Since Amtrak ceased operations along the railroad in 1994, the building has only seen occasional use as office space.

The lot is rectangular measuring 215 feet by 68.5 feet containing 15,050 square feet, or approximately 0.35 acres, and is zoned M1, heavy industry. The lot is between the CSX railroad tracks that carry over 50 trains per day and the Alabama River. Vehicular access to the lot is restricted to a road that crosses the CSX railroad. The lost has also been improved with walkways, driveways, fencing, and a playground.

The building is configured as eight connected cylindrical towers of reinforced concrete approximately 100 feet in height. The building has a metal roof that leaks substantially and needs extensive repair. Water has damaged the ceilings and many ceiling tiles need to be replaced. Door and window openings are sawed into the reinforced concrete silo structure. The first floor of the building is heated and air-conditioned. On the first floor there is an office area including men's and women's bathrooms containing approximately 1,952 square feet. The area above the first floor is unimproved empty space.

Issued on: March 31, 2004.

Hiram J. Walker,

Regional Administrator.

[FR Doc. 04–7677 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Reebie Associates (WB654–9—3/26/04), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

FOR FURTHER INFORMATION CONTACT: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 04–7771 Filed 4–5–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

DATES: Written comments should be received on or before June 7, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P, Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: United States Estate (and Generation-Skipping Transfer) Tax Return.

OMB Number: 1545–0015.

Form Number: 706.

Abstract: Form 706 is used by executors to report and compute the Federal estate tax imposed by Internal Revenue Code section 2001 and the Federal generation-skipping transfer (GST) tax imposed by Code section 2601. The IRS uses the information on the form to enforce the estate and GST tax provisions of the Code and to verify that the taxes have been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 117,000.

Estimated Time Per Respondent: 18 hours, 8 minutes.

Estimated Total Annual Burden Hours: 2,120,805.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may

become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 30, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–7798 Filed 4–5–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0065]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant's eligibility for increased disability benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 7, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov.* Please refer to "OMB Control No. 2900–0065" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Employment Information in Connection with Claim for Disability Benefits, VA Form 21–4192.

OMB Control Number: 2900–0065.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4192 is used to request employment information from a claimant's employer. The collected data is used to determine the claimant's eligibility for increased disability benefits based on unemployability.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 15,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 60,000.

Dated: March 23, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–7718 Filed 4–5–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0342]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to meet statutory requirements for job training program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 7, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail comments to: *nancy.kessinger@mail.va.gov.* Please refer to "OMB Control No. 2900–0342" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's

functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Other On-The-Job Training and Apprenticeship Training Agreement and Standards, (Training Programs Offered Under 38 U.S.C. 3677 and 3687), VA Form 22–8864.

b. Employer's Application to Provide Job Training, (Under Title 38 U.S. Code. 3677 and 3687), VA Form 22–8865.

OMB Control Number: 2900–0342.

Type of Review: Extension of a currently approved collection.

Abstract: VA uses the information on VA Form 22–8864 to ensure that a trainee is entering an approved training program. VA Form 22–8865 is use to ensure that training programs and agreements meet statutory requirements for approval of an employer's job training program.

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Annual Burden: 300 hours.

a. Other On-The-Job Training and Apprenticeship Training Agreement and Standards, (Training Programs Offered Under 38 U.S.C. 3677 and 3687), VA Form 22–8864—75 hours.

b. Employer's Application to Provide Job Training, (Under Title 38 U.S. Code. 3677 and 3687), VA Form 22–8865—225 hours.

Estimated Average Burden Per Respondent:

a. Other On-The-Job Training and Apprenticeship Training Agreement and Standards, (Training Programs Offered Under 38 U.S.C. 3677 and 3687), VA Form 22–8864—30 minutes.

b. Employer's Application to Provide Job Training, (Under Title 38 U.S. Code. 3677 and 3687), VA Form 22–8865—90 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 300.

a. Other On-The-Job Training and Apprenticeship Training Agreement and Standards, (Training Programs Offered Under 38 U.S.C. 3677 and 3687), VA Form 22–8864—150 Respondents.

b. Employer's Application to Provide Job Training, (Under Title 38 U.S. Code. 3677 and 3687), VA Form 22–8865—150 Respondents.

Dated: March 23, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–7719 Filed 4–5–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0593]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Materiel Management (OA&MM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to identify bid envelopes from other mail parcels.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 7, 2004.

ADDRESSES: Submit written comments on the collection of information to Donald E. Kaliher, Office of Acquisition and Materiel Management (95A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *donald.kaliher@mail.va.gov*. Please refer to "OMB Control No. 2900–0593" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Donald E. Kaliher at (202) 273–8819.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OA&MM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OA&MM's functions, including whether the information will have practical utility; (2) the accuracy of OA&MM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Affairs Acquisition Regulation (VAAR) Provision 852.214–70, Caution to Bidders—Bid Envelopes.

OMB Control Number: 2900–0593.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR provision 852.214–70, Caution to Bidders—Bid Envelopes, advises bidders that it is their responsibility to ensure that their bid price cannot be ascertained by anyone prior to bid opening. It also advises bidders to identify their bids by showing the invitation number and bid opening date on the outside of the bid envelope. The Government often furnishes a blank bid envelope or a label for use by bidders/offers to identify their bids. The bidder is advised to fill in the required information. This information requested from bidders is needed by the Government to identify bid envelopes from other mail or packages received without having to open the envelopes or packages and possibly exposing bid prices before bid opening. The information will be used to identify which parcels or envelopes are bids and which are other routine mail. The information is also needed to help ensure that bids are delivered to the proper bid opening room on time and prior to bid opening.

Affected Public: Business or other for-profit; Individuals and households; and Not-for-profit institutions.

Estimated Annual Burden: 960 hours.

Estimated Average Burden Per Respondent: 10 seconds.

Frequency of Response: On occasion.

Estimated Number of Respondents: 346,000.

Dated: March 23, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–7720 Filed 4–5–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0005]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant's eligibility for dependency and indemnity compensation, death compensation, and/or accrued benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 7, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0005" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Dependency and Indemnity Compensation by Parent(s), (Including Accrued Benefits and Death Compensation, When Applicable), VA Form 21–535.

OMB Control Number: 2900–0005.

Type of Review: Extension of a currently approved collection.

Abstract: Surviving parent(s) of veterans whose death was service connected complete VA Form 21–535 to apply for dependency and indemnity compensation, death compensation, and/or accrued benefits. The information collected is used to determine the claimant's eligibility for death benefits sought.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,320 hours.

Estimated Average Burden Per Respondent: 1 hour 12 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 3,600.

Dated: March 23, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–7721 Filed 4–5–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0143]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to establish landlord tenant relationship when properties acquired by VA through guaranteed and direct home loan programs are rented.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 7, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or *mailto:irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0143" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Offer to Rent on Month-To-Month Basis and Credit Statement of Prospective Tenant, VA Form 26–6725.

OMB Control Number: 2900–0143.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–6725 serves as a credit statement and rental offer executed by prospective tenants of properties owned by VA. VA may rent properties acquired through guaranteed and direct home loan programs when there is little likelihood, because of market conditions, or an early sale and/or prolonged vacancy may encourage vandalism. The form states the responsibilities of the parties, evidence of tender and acceptance of rental payments, and provides credit information for evaluating the

prospective tenant's ability to meet rental payments.

Affected Public: Individuals or households and Business or other for profit.

Estimated Annual Burden: 33 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 100.

Dated: March 23, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–7722 Filed 4–5–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0046]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's eligibility for refundable credit.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 7, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0046" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Heirs for Payment of Credits Due Estate of Deceased Veteran, VA Form Letter 29–596.

OMB Control Number: 2900–0046.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–596 is use by administrator, executor, or next of kin to support a claim for money in the form of unearned or unapplied insurance premiums due to a deceased veteran's estate.

Affected Public: Individuals or households.

Estimated Annual Burden: 78 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 312.

Dated: March 25, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–7723 Filed 4–5–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0099]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to request a change of education program or place of training.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 7, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0099" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Change of Program or Place of Training—Survivors' and Dependents' Educational Assistance, VA Form 22–5495.

OMB Control Number: 2900–0099.

Type of Review: Extension of a currently approved collection.

Abstract: Spouses, surviving spouses, or children of veterans who are eligible

for Dependent's Educational Assistance, complete VA Form 22–5495 to change their program of education and/or place of training. VA uses the information to determine if the new program selected is suitable to their abilities, aptitudes, and interests and to verify that the new place of training is approved for benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,400 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 17,600.

Dated: March 25, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–7724 Filed 4–5–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0317]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on additional information needed to complete a claimant's application.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 7, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0317" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Identifying Information Re: Veteran's Loan Records, VA Form Letter 26–626.

OMB Control Number: 2900–0317.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–626 is used to notify a correspondent that additional information is needed to determine if a veteran's loan guaranty benefits are involved, and if so, to obtain the necessary information to identify and associate the correspondence with the correct veteran's loan application or record.

Affected Public: Individuals or households.

Estimated Annual Burden: 200 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,400.

Dated: March 25, 2004.

By direction of the Secretary:

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–7725 Filed 4–5–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0643]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to improve women veterans' health care.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 7, 2004.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *ann.bickoff@hq.med.va.gov*. Please refer to "OMB Control No. 2900–0643" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Women Veterans Ambulatory Care Use: Patterns, Barriers, and Influences, VA Form 10–21063(NR).

OMB Control Number: 2900–0643.

Type of Review: Extension of a currently approved collection.

Abstract: The purpose of the study is to gain an understanding of VA women veterans' use of health care from the perspective of women veterans. The data collected will: (1) Characterize patterns of VA and non-VA ambulatory care use by women veterans, and contrast them to those of male veterans; (2) identify barriers and influences on VA ambulatory care use, including those related to women's military experience, veteran identity, and perceptions about the availability and quality of VA women's health care; (3) identify factors associated with gender gaps in VA ambulatory care use and; (4) apply these findings to develop interventions and policies to improve access of women veterans to VA ambulatory care.

Affected Public: Individuals or households.

Estimated Annual Burden: 707 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 2,624.

Dated: March 25, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–7726 Filed 4–5–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0144]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to apply for a home loan guaranty.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 7, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or email *irmnkess@vba.gov*. Please refer to "OMB Control No. 2900–0144" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: HUD/VA Addendum to Uniform Residential Loan Application, VA Form 26–1802a, and Freddie Mac 65/Fannie Mae Form 1003, Uniform Residential Loan Application.

OMB Control Number: 2900–0144.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–1802a serves as a joint loan application for both VA and the Department of Housing and Urban Development (HUD). Lenders and veterans use the form to apply for guaranty of home loans.

Affected Public: Individuals or households, and Business or other for-profit.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 200,000.

Dated: March 25, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–7727 Filed 4–5–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0585]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Acquisition and Material Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Material Management (OA&MM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to allow firms to offer items that are equal to the brand name item stated in the bid.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 7, 2004.

ADDRESSES: Submit written comments on the collection of information to Donald E. Kaliher, Office of Acquisition and Material Management (049A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *donald.kaliher@mail.va.gov*. Please refer to "OMB Control No. 2900–0585" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Donald E. Kaliher at (202) 273–8819.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must

obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OA&MM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OA&MM's functions, including whether the information will have practical utility; (2) the accuracy of OA&MM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–77, Brand Name or Equal (was 852.210–77).

OMB Control Number: 2900–0585.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR clause 852.211–77, Brand Name or Equal, advises bidders or offerors who are proposing to offer an item that is alleged to be equal to the brand name item stated in the bid, that it is the bidder's or offeror's responsibility to show that the item offered is in fact, equal to the brand name item. This evidence may be in the form of descriptive literature or material, such as cuts, illustrations, drawings, or other information. While submission of the information is voluntary, failure to provide the information may result in rejection of the firm's bid or offer if the Government cannot otherwise determine that the item offered is equal. The contracting officer will use the information to evaluate whether or not the item offered meets the specification requirements.

Affected Public: Business or other for-profit; Individuals and households; and Not-for-profit institutions.

Estimated Annual Burden: 833 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

Dated: March 25, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–7728 Filed 4–5–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0586]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Materiel Management (OA&MM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to ensure that the items being purchased meet minimum safety standards and to protect VA employees, VA beneficiaries and the public.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 7, 2004.

ADDRESSES: Submit written comments on the collection of information to Donald E. Kaliher, Office of Acquisition and Materiel Management (049A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *donald.kaliher@mail.va.gov*. Please refer to "OMB Control No. 2900–0586" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Donald E. Kaliher at (202) 273–8819.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OA&MM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OA&MM's functions, including whether the information will have practical utility; (2) the accuracy of OA&MM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Affairs Acquisition Regulation (VAAR) Provision 852.211–75, Technical Industry Standards.

OMB Control Number: 2900–0586.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR provision 852.211–75, Technical Industry Standards, requires that items offered for sale to VA under the solicitation conform to certain technical industry standards, such as Underwriters Laboratory (UL) or the National Fire Protection Association, and that the contractor furnish evidence to VA that the items meet that requirement. The evidence is normally in the form of a tag or seal affixed to the item, such as the UL tag on an electrical cord or a tag on a fire-rated door. This requires no additional effort on the part of the contractor, as the items come from the factory with the tags already in place, as part of the manufacturer's standard manufacturing operation. Occasionally, for items not already meeting standards or for items not previously tested, a contractor will have to furnish a certificate from an acceptable laboratory certifying that the items furnished have been tested in accordance with, and conform to, the specified standards. Only firms whose products have not previously been tested to ensure the products meet the industry standards required under the solicitation will be required to submit a separate certificate. The information will be used to ensure that the items being purchased meet minimum safety standards and to protect VA employees, VA beneficiaries, and the public.

Affected Public: Business or other for-profit; Individuals and households; and Not-for-profit institutions.

Estimated Annual Burden: 50 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 100.

Dated: March 25, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–7729 Filed 4–5–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0587]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Materiel Management (OA&MM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to repair technical medical equipment and devices or mechanical equipment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 7, 2004.

ADDRESSES: Submit written comments on the collection of information to Donald E. Kaliher, Office of Acquisition and Materiel Management (049A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *donald.kaliher@mail.va.gov*. Please refer to "OMB Control No. 2900–0587" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Donald E. Kaliher at (202) 273–8819.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OA&MM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OA&MM's functions, including whether the information will have practical utility; (2) the accuracy of OA&MM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–70, Service Data Manual (previously 852.210–70)

OMB Control Number: 2900–0587.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR clause 852.211–70, Service Data Manual, is used when VA purchases technical medical equipment and devices, or mechanical equipment. The clause requires the contractor to furnish both operator's manuals and maintenance/repair manuals with the equipment provided to the Government. This clause sets forth those requirements and sets forth the minimum standards those manuals must meet to be acceptable. Generally, this is the same operator's manual furnished with each piece of equipment sold to the general public and the same repair manual used by company technicians in repairing the company's equipment. The cost of the manuals is included in the contract price or listed as separately priced line items on the purchase order. The operator's manual will be used by the individual actually operating the equipment to ensure proper operation and cleaning. The repair manual will be used by VA equipment repair staff to repair equipment.

Affected Public: Business or other for-profit; Individuals and households; and Not-for-profit institutions.

Estimated Annual Burden: 2,500 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 15,000.

Dated: March 25, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–7730 Filed 4–5–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0588]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Materiel Management (OA&MM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to ensure that equipment proposed by the contractor meets specification requirements.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 7, 2004.

ADDRESSES: Submit written comments on the collection of information to Donald E. Kaliher, Office of Acquisition and Materiel Management (049A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *donald.kaliher@mail.va.gov*. Please refer to "OMB Control No. 2900–0588" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Donald E. Kaliher at (202) 273–8819.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501 " 3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OA&MM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OA&MM's functions, including whether the information will have practical utility; (2) the accuracy of OA&MM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Affairs Acquisition Regulation (VAAR) Provision 852.211–74, Special Notice (previously 852.210–74).

OMB Control Number: 2900–0588.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR provision 852.211–74, Special Notice, is used only in VA's telephone system acquisition solicitations and requires the contractor, after award of the contract, to submit descriptive literature on the equipment the contractor intends to furnish to show how that equipment meets specification requirements of the solicitation. The information is needed to ensure that equipment proposed by the contractor meets specification requirements. Failure to require the information could result in the installation of equipment that does not meet contract requirements, with significant loss to the contractor if the contractor subsequently had to remove the equipment and furnish equipment that did meet the specification requirements.

Affected Public: Business or other for-profit; Individuals and households; and Not-for-profit institutions.

Estimated Annual Burden: 150 hours.

Estimated Average Burden Per Respondent: 5 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30.

Dated: March 25, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–7731 Filed 4–5–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0589]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Materiel Management (OA&MM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to ensure that shellfish purchased by VA comes from a State- and Federal-approved and inspected source.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 7, 2004.

ADDRESSES: Submit written comments on the collection of information to Donald E. Kaliher, Office of Acquisition and Materiel Management (049A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *donald.kaliher@mail.va.gov*. Please refer to "OMB Control No. 2900–0589" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Donald E. Kaliher at (202) 273–8819.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501 " 3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OA&MM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OA&MM's functions, including whether the information will have practical utility; (2) the accuracy of OA&MM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Affairs Acquisition Regulation (VAAR) Provision 852.270–3, Shellfish.

OMB Control Number: 2900–0589.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR clause 852.270–3, Shellfish, requires that a firm furnishing shellfish to VA must ensure that the shellfish is packaged in a container that is marked with the packer's State certificate number and State abbreviation. In addition, the firm must ensure that the container is tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper. This information normally accompanies the shellfish from the packer and is not information that must be separately obtained by the seller. The information is needed to ensure that shellfish purchased by VA comes from a State- and Federal-approved and inspected source. The information is used to help ensure that VA purchases healthful shellfish.

Affected Public: Business or other for-profit; Individuals and households; and Not-for-profit institutions.

Estimated Annual Burden: 17 hours.

Estimated Average Burden Per Respondent: 1 minute.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: March 25, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–7732 Filed 4–5–04; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 69, No. 66
Tuesday, April 6, 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 DEFENSE

Department of the Army; Corps of Engineers

Availability for the Draft Feasibility Report and Environmental Impact Statement/Environmental Impact Report for the Hamilton City Flood Damage Reduction and Ecosystem Restoration, Glenn County, CA

Correction

In notice document 04–7194 appearing on page 16902 in the issue of Wednesday, March 31, 2004, make the following corrections:

1. In the second column, in the **SUMMARY** paragraph, in the tenth line, "Community" should be removed.

2. In the third column, in the **FOR FURTHER INFORMATION CONTACT** paragraph, in the sixth line, "1225" should read "1325".

3. In the same column, in the file line, the billing code should read "3710–EZ–M".

[FR Doc. C4–7194 Filed 4–5–04; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of Army; Corps of Engineers

Notice of Availability of a Final Supplemental Environmental Impact Statement (FSEIS), for Phipps Ocean Park Beach Restoration Project, FSEIS—Department of the Army (DA) Permit Application Number 200000380 (IP–PLC), Town of Palm Beach, Palm Beach County, FL

Correction

In notice document 04–7195 beginning on page 16903 in the issue of Wednesday, March 31, 2004, make the following correction:

1. On page 16903, in the first column, in the last paragraph, in the fourth and fifth lines, remove "alternative and other alternatives elvaluated to provide".

2. On the same page, in the second column, in the first paragraph, in the third line, "storm associated" should read "storm risks associated".

3. On the same page, in the same column, in the second paragraph, in the third line, "North" should read "Worth".

4. On the same page, in the same column, in the third paragraph, in the fifth line, "R–116a nd " should read "R–116 and".

[FR Doc. C4–7195 Filed 4–5–04; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
April 6, 2004

Part II

Environmental Protection Agency

40 CFR Part 122, et al.
Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations; Analysis and Sampling Procedures; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 136, 141, 143, 403, 430, 455, and 465

[FRL–7638–9]

RIN 2040–AD71

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations; Analysis and Sampling Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing changes to analysis and sampling procedures in wastewater regulations. These changes include proposal of vendor-developed methods; new EPA and voluntary consensus standard bodies (VCSB) methods; updated versions of currently approved methods; revised method modification and analytical requirements; withdrawal of certain outdated methods; and changes to sample collection, preservation, and holding time requirements. EPA also is proposing changes to drinking water analysis and monitoring. These changes include proposal of vendor-developed methods; new EPA and VCSB methods; and updated VCSB methods. The addition of new and updated methods to the wastewater and drinking water regulations will provide increased flexibility to the regulated community and laboratories in the selection of analytical methods. Finally, EPA is soliciting comment on the guidance document *EPA Microbiological Alternate Test Procedure (ATP) Protocol for Drinking Water, Ambient Water, and Wastewater Monitoring Methods.*

DATES: Comments must be postmarked, delivered by hand, or electronically mailed on or before June 7, 2004. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. Eastern Time on June 7, 2004.

ADDRESSES: Comments may be submitted by mail to Water Docket, U.S. Environmental Protection Agency (4101T), 1200 Pennsylvania Avenue NW., Washington DC 20460, or electronically through EPA Dockets at *http://www.epa.gov/edocket/*, Attention Docket ID No. OW–2003–0070. See Section C of the **SUPPLEMENTARY INFORMATION** section for additional ways to submit comments and more detailed instructions.

FOR FURTHER INFORMATION CONTACT: For information regarding the proposed changes to wastewater regulations contact Marion Kelly, Engineering and Analysis Division (4303T), USEPA Office of Science and Technology, 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202–566–1045 (e-mail: *Kelly.Marion@epa.gov*). For information regarding the proposed changes to drinking water regulations, contact Herbert J. Brass, Technical Support Center (MS 140), USEPA, Office of Ground Water and Drinking Water, 26 West Martin Luther King Drive, Cincinnati, OH 45268, 513–569–7936 (e-mail: *Brass.Herb@epa.gov*). For information on the guidance document *EPA Microbiological Alternate Test Procedure (ATP) Protocol for Drinking Water, Ambient Water, and Wastewater Monitoring Methods* contact Robin K. Oshiro, Engineering and Analysis Division (4303T), USEPA Office of Science and Technology, 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202–566–1075 (e-mail: *Oshiro.Robin@epa.gov*).

SUPPLEMENTARY INFORMATION:

A. Potentially Regulated Entities

1. Clean Water Act

EPA Regions, as well as States, Territories and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits that comply with the technology-based and water quality-based requirements of the Clean Water Act (CWA). In doing so, NPDES permitting authorities, including States, Territories, and Tribes, make several discretionary choices when they write a permit. These choices include the selection of pollutants to be measured and, in many cases, limited in permits. If EPA has "approved" (i.e., promulgated through rulemaking) procedures for analysis of pollutants (i.e., test procedures), the NPDES permit must include one of the approved testing procedures or an approved alternate test procedure. Similarly, if EPA has approved sampling requirements, measurements taken under an NPDES permit must comply with these requirements. Therefore, entities with NPDES permits could potentially be regulated by the proposed actions in this rulemaking. In addition, when an authorized State, Territory, or Tribe certifies Federal licenses under CWA section 401, they must use the standardized analysis and sampling procedures. Categories and entities that could potentially be regulated include:

Category	Examples of potentially regulated entities
State, Territorial, and Indian Tribal Governments.	States, Territories, and Tribes authorized to administer the NPDES permitting program; States, Territories, and Tribes providing certification under Clean Water Act section 401.
Industry	Facilities that must conduct monitoring to comply with NPDES permits.
Municipalities	POTWs that must conduct monitoring to comply with NPDES permits.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability language at 40 CFR 122.1, (NPDES purpose and scope), 40 CFR 136.1 (NPDES permits and CWA), 40 CFR 403.1 (Pretreatment standards purpose and applicability), 40 CFR 430.00 (Pulp, paper, and paperboard point source category applicability), 40 CFR 455.20, 455.30, 455.40, 455.60 (Pesticide point source category applicability), and 40 CFR 465.01 (Coil coating point source category applicability). If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

2. Safe Drinking Water Act

Public water systems are the regulated entities required to conduct analyses to measure for contaminants in water samples. However, EPA Regions, as well as States, and Tribal governments with primacy to administer the regulatory program for public water systems under the Safe Drinking Water Act, sometimes conduct analyses to measure for contaminants in water samples. If EPA has established a maximum contaminant level ("MCL") for a given drinking water contaminant, the Agency also approves (*i.e.*, promulgates through rulemaking) standardized testing procedures for analysis of the contaminant. Once EPA standardizes such test procedures, analysis using a standard test procedure (or approved alternate test procedures) is generally required. Public water systems required to test water samples must use one of the approved standardized test

procedures. Categories and entities that may ultimately be regulated include:

Category	Examples of potentially regulated entities	NAICS[1]
State, Local, & Tribal Governments	States, local and tribal governments that analyze water samples on behalf of public water systems required to conduct such analysis; States, local and tribal governments that themselves operate community and non-transient non-community water systems required to monitor.	924110
Industry	Private operators of community and non-transient non-community water systems required to monitor.	221310
Municipalities	Municipal operators of community and non-transient non-community water systems required to monitor.	924110

[1]North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. The table lists types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the tables could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability language at 40 CFR 141.2 (definition of public water system). If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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 No. OW–2003–0070. 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 Water Docket in the EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. For access to docket materials, please call ahead to schedule an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The Docket may charge 15 cents per page for each page over the page limit plus an administrative fee of $25.00.

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 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 B.1.

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 for which 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 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.

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.

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 No. OW–2003–0070. 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 electronic mail (e-mail) to: *OW-docket@epamail.epa.gov,* Attention Docket ID No. OW–2003–0070. 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 Section 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 an original and three copies of your comments to Water Docket, U.S. Environmental Protection Agency (4101T), 1200 Pennsylvania Avenue NW., Washington, DC 20460, Attention Docket ID No. OW–2003–0070.

3. By Hand Delivery or Courier

Deliver your comments to the Water Docket in the EPA Water Center, EPA West Building, Room B102, 1301 Constitution Avenue NW., Washington, DC, Attention Docket ID No. OW–2003–0070. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section 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 identified in the **FOR FURTHER INFORMATION CONTACT** section.

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 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 your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

F. Abbreviations and Acronyms Used in the Preamble and Proposed Rule

ASTM: ASTM International
ATP: Alternate Test Procedure
CIE–UV: Capillary Ion Electrophoresis with Indirect Ultraviolet Detection
CWA: Clean Water Act
EMMC: Environmental Monitoring Management Council
EPA: Environmental Protection Agency
FLAA: Flame Atomic Absorption Spectroscopy
GC–MS: Gas Chromatography with Mass Spectrometry Detection
IC: Ion Chromatography
ICP–AES: Inductively Coupled Plasma-Atomic Emission Spectroscopy
ICP–MS: Inductively Coupled Plasma-Mass Spectroscopy
ISE: Ion Selective Electrode
NPDES: National Pollutant Discharge Elimination System
NPDWR: National Primary Drinking Water Regulations
NSDWR: National Secondary Drinking Water Regulations
SDWA: Safe Drinking Water Act
STGFAA: Stabilized Temperature Graphite Furnace Atomic Absorption Spectroscopy

Table of Contents

I. Statutory Authority

A. Clean Water Act

EPA is proposing this action pursuant to the authority of sections 301(a), 304(h), and 501(a) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. 1311(a), 1314(h), 1361(a). Section 301(a) of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit issued under section 402 of the Act. Section 304(h) of the Act requires the Administrator of the EPA to "* * * promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to [section 401 of this Act] or permit application pursuant to [section 402 of this Act]." Section 501(a) of the Act authorizes the Administrator to "* * * prescribe such regulations as are necessary to carry out this function under [the Act]." EPA generally publishes test procedure regulations (including analysis and sampling requirements) for CWA programs at 40 CFR part 136, though some specific requirements are in other sections (*e.g.*, 40 CFR Chapter I, Subchapters N and O).

B. Safe Drinking Water Act

The Safe Drinking Water Act (SDWA), as amended in 1996, requires EPA to promulgate national primary drinking water regulations (NPDWRs) that specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants (SDWA section 1412 (42 U.S.C. 300g–1)). NPDWRs apply to public water systems pursuant to SDWA sections 1401(1)(A) (42 U.S.C. 300f(1)(A)). According to SDWA section 1401(1)(D), NPDWRs include "* * * criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures * * *" (42 U.S.C. 300f(1)(D)). In addition, SDWA section 1445(a) authorizes the Administrator to establish regulations for monitoring to help determine whether persons are acting in compliance with the requirements of the SDWA (42 U.S.C. 300j–4). EPA's promulgation of analytical methods for NPDWRs is authorized under these sections of the SDWA as well as the general rulemaking authority in SDWA section 1450(a) (42 U.S.C. 300j–9(a)).

The SDWA also authorizes EPA to promulgate national secondary drinking water regulations (NSDWRs) for contaminants in drinking water that primarily affect the aesthetic qualities relating to the public acceptance of drinking water (SDWA section 1412 (42 U.S.C. 300g–1)). These regulations are not Federally enforceable but are guidelines for the States (40 CFR 143.1). The NSDWRs also include analytical techniques for determining compliance with the regulations (40 CFR 143.4). EPA's promulgation of analytical methods for NSDWRs is authorized under general rulemaking authority in SDWA section 1450(a) (42 U.S.C. 300j–9(a)).

II. Explanation of Today's Action

A. Methods for NPDES Compliance Monitoring

EPA approves analytical methods for measuring regulated pollutants in wastewater. Regulated and regulatory entities use these approved methods for determining compliance with an NPDES permit or other monitoring requirement. Often, these entities have a choice in deciding which approved method they will use to measure a pollutant because multiple approved methods are available.

This rule proposes to add to the list of approved test procedures for a number of pollutants. Some proposed methods introduce new technologies to the NPDES program, while others are updated versions of previously approved methods. EPA believes that these additions will improve data quality and provide the regulated community with greater flexibility. Furthermore, many of the additions will promote consistency between the NPDES (wastewater) and NPDWRs/NSDWRs (drinking water) compliance monitoring programs by adopting the same versions of methods for both programs—allowing laboratories to use a single version of a method to satisfy multiple water compliance monitoring needs.

This rule also proposes to allow increased method flexibility by explicitly allowing certain technical changes (*e.g.*, allowing the use of capillary columns in gas chromatography methods, allowing the addition of salts—under certain conditions—to resolve interferences in extraction procedures). Finally, this rule proposes to remove certain outdated methods, including chlorofluorocarbon-based oil and grease methods.

B. Sampling, Sample Preservation, and Holding Times for NPDES Compliance Monitoring

EPA publishes sampling, sample preservation, and holding time requirements in regulations to help ensure that samples collected for NPDES compliance monitoring provide a representative measurement of the pollutants in wastestreams. This rule proposes to update these requirements to reflect new information and create consistency among CFR sections.

C. Editorial Changes to 40 CFR Part 136

This rule proposes editorial changes to 40 CFR part 136 to correct errors and update information.

D. Methods for NPDWR and NSDWR Compliance Monitoring and Monitoring Requirements

EPA approves analytical methods for monitoring contaminants in drinking water. The drinking water industry uses these approved methods for determining compliance with NPDWRs and NSDWRs. Because multiple methods are generally available, public water systems often have a choice in deciding which approved method they will use to measure a drinking water contaminant.

This rule proposes to add a new means of monitoring for compliance with a radiological contaminant limit, and new methods for chemical contaminant monitoring. These additions will provide greater monitoring flexibility.

E. Microbiological ATP Protocol

EPA is soliciting comments on "EPA Microbiological Alternate Test Procedure (ATP) Protocol for Drinking Water, Ambient Water, and Wastewater Monitoring Methods—Guidance" (July 2003; EPA–821–B–03–004) (Protocol).

III. Summary of Proposed Revisions to Wastewater Regulations

A. Analytical Methods for NPDES Compliance Monitoring

1. Chemical Alternate Test Procedures

To promote method flexibility, EPA maintains a program whereby stakeholders (*e.g.*, instrument manufacturers, environmental laboratories, regulated entities) can apply for EPA approval of alternate test procedures. The Alternate Test Procedure (ATP) program is codified at 40 CFR 136.4 and 136.5 for wastewater. This rule proposes to approve three alternate test procedures at 40 CFR part 136 for monitoring chemical pollutants:

- "Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion

Electrophoresis and Chromate Electrolyte" (D6508, Rev. 2) by Waters Corporation.

- "Digestion and Distillation of Total Cyanide in Drinking and Wastewaters using MICRO DIST and determination of cyanide by flow injection analysis" (QuikChem Method 10–204–00–1–X) by Lachat Instruments.
- "Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, and Thiocyanate" (Kelada-01) by Dr. Nabih Kelada.

This rule also proposes to approve one method in the pulp, paper, and paperboard point source category regulations at 40 CFR 430.02:

- "Chlorinated Phenolics in Water by *In situ* Acetylation and GC/MS Determination" (Method CP–86.07) by the National Council for Air and Stream Improvement (NCASI).

Each of the above-listed ATPs offers substantial advantages over currently approved methods, and their approval will give analysts additional flexibility in meeting monitoring requirements.

a. Anions by Capillary Ion Electrophoresis With Indirect Ultraviolet Detection (CIE–UV)

Waters Corporation's "Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion Electrophoresis and Chromate Electrolyte" (Method D6508, Rev. 2) is a new method that uses capillary ion electrophoresis to determine common anions—bromide, chloride, fluoride, nitrate, nitrite, orthophosphate, and sulfate—in drinking water and wastewater. Method D6508 appears to provide an acceptable technological alternative to ion chromatography and wet chemical methods in terms of method performance and is equivalent to other approved methods in the working range. In addition, the method is relatively easy to use (the CIE–UV system has fewer moving parts and components than an ion chromatography system making it easier to operate and maintain), involves relatively low cost equipment (the cost of a CIE–UV capillary column is $30 compared to an ion chromatography column that can be greater than $800), and generally reduces laboratory wastes (less than 100 milliliters of waste is generated daily).

Capillary ion electrophoresis (CIE) employs the same general principle of "separation followed by detection" common to all chromatography methods. Anions migrate through a silica capillary column containing an electrolyte solution under the influence of an electric field. With CIE, anions in the sample separate according to their equivalent ionic conductance and mobility, and are measured using indirect ultraviolet (UV) detection: the UV absorbing electrolyte anion is displaced charge-for-charge by analyte anion. The corresponding decrease in background absorption is proportional to the concentrations of anions.

An 11-laboratory validation study characterized the performance of Method D6508. Eight concentration levels included analyses of reagent water, "substitute" wastewater, "real" wastewater, and drinking water matrix types. The range of Method D6508 is 0.2 to 50 mg/L for all analytes but fluoride, for which the range is 0.2 to 25 mg/L. The method provides precision and recovery data for all analytes in all matrices. For example, across all analytes at concentrations of approximately 3 mg/L in real wastewater, the range of multilaboratory recovery was 84–100%, and relative standard deviation was 6–26%. Waters Corp. generated quality control limits in the method from the study data available in the docket supporting this proposal.

ASTM International (ASTM) adopted a previous version of Method D6508. If the updated version of the method included in the docket is adopted by ASTM prior to publication of the final rule, the ASTM method also may be approved.

A copy of Method D6508 and the method validation study report are in the docket for this proposed rule. In addition, copies of Method D6508 may be obtained from Waters Corporation. Contact: Jim Krol, Waters Corp., 34 Maple St, Milford, MA 01757, 508/482–2131 (Office), 508/482–3625 (FAX), and *Jim_Krol@Waters.com*.

b. Cyanide Microdistillation

Lachat Instrument's "Digestion and Distillation of Total Cyanide in Drinking and Wastewaters using MICRO DIST and Determination of Cyanide by Flow Injection Analysis" (QuikChem Method 10–204–00–1–X) is a method that determines total cyanide in drinking water and wastewater. The method employs the MICRO DIST distillation apparatus, a reduced-volume and disposable counterpart to other distillation apparatuses. MICRO DIST substantially reduces distillation time (by 50% as compared with the currently approved macrodistillation) and laboratory wastes (because it requires small sample and reagent volumes required). It easily allows multiple simultaneous distillations (one distillation heating block accommodates 21 MICRO DIST apparatuses). MICRO DIST also has lower costs than some other cyanide distillations due to time saved (in analysis and sample throughput) and reduced waste disposal costs.

Using MICRO DIST, total cyanide is determined by distilling the sample and measuring cyanide generated using a technique for cyanide ion detection (*e.g.*, colorimetry). Six milliliters of sample are added to a distillation tube along with standard cyanide distillation reagents (sulfuric acid, magnesium chloride). A cyanide collector tube, which consists of a gas permeable membrane and sodium hydroxide absorber solution, is attached to the distillation tube; the distillation and collector tubes together comprise the MICRO DIST apparatus. The sample is heated for one-half hour, during which hydrogen cyanide gas distills from the sample, passes through the gas permeable membrane, and collects in the sodium hydroxide absorber solution. QuikChem Method 10–204–00–1–X provides instructions for measuring cyanide in the absorber solution using an automated colorimeter. However, the Method specifies that the absorber solution may be analyzed using another procedure (*e.g.*, manual colorimetry) as well, provided all requirements in the Method are followed (*e.g.*, pH of the absorber solution and standards are adjusted to match). This rule proposes both Method 10–204–00–1–X as a stand alone method, and the MICRO DIST distillation procedure found in that method as an alternative to other approved distillation procedures.

Method performance was characterized by two single laboratory studies, and a nine-laboratory validation study. Lachat and the Research Triangle Institute performed single laboratory studies that demonstrated that recovery of complex cyanides using MICRO DIST was equivalent to recovery with a conventional distillation apparatus. The nine-laboratory validation study demonstrated that Method 10–204–00–1–X with the MICRO DIST apparatus provided equivalent performance to EPA-approved total cyanide methods across laboratories.

In validation of MICRO DIST, EPA reviewed data on recoveries of free cyanide from wastewater matrices, and the recovery of complex cyanides. EPA did not receive data on the recovery of particulate cyanide, but other factors suggest that particulate cyanide will not pose a problem with the method. These factors include (1) the performance of the method in recovering complex cyanides, (2) the increasing reagent concentrations in the solution during distillation (due to sample transfer during distillation), and (3) the fact that

MICRO DIST employs a hard distillation versus a reflux distillation. EPA requests comments on the issue of the distillation and solicits data regarding MICRO DIST's recovery of particulate cyanide.

A copy of QuikChem Method 10–204–00–1–X and the method validation study report are in the docket for this proposed rule. In addition, copies of QuikChem Method 10–204–00–1–X may be obtained from Lachat Instruments, 6645 W. Mill Rd., Milwaukee, WI 53218, USA. Phone: 414–358–4200.

c. Cyanide by UV-digestion/Flash Distillation/Colorimetry

Dr. Nabih Kelada's "Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, and Thiocyanate," EPA 821–B–01–009 (Kelada-01) is an automated procedure that determines total cyanide and acid dissociable cyanide in drinking water and wastewater. The procedure uses a two-stage sample digestion system to determine total cyanide. A sample is introduced into a flow analysis system. The sample then passes through an irradiation coil, where it is exposed to intense ultraviolet (UV) light from a high power (*e.g.*, 550 Watt) UV. photochemical bulb. The UV light breaks down cyanide complexes (including strong ferro- and ferri-cyanide complexes) to free cyanide. The irradiated sample containing free cyanide then passes though a distillation coil from which the free cyanide is distilled into a flow colorimetry system (similar to that used in EPA Methods 335.3 and 335.4), and cyanide concentration is determined. All complex cyanides recovered using the total cyanide manual distillation are recovered using Kelada-01.

When the irradiation coil is by-passed—exposing sample only to a distillation coil—"acid dissociable" cyanide is determined. The complexes measured are equivalent to those measured using cyanide amenable to chlorination (CATC) and "available" cyanide procedures, according to single laboratory studies performed by the Metropolitan Water Reclamation District of Greater Chicago.

Kelada-01 offers a number of substantial advantages over currently approved methods, such as a reduced analysis time (from one to two hours to minutes), and substantially reduced effects of many interferences encountered with manual distillation methods. Kelada-01 also produced very precise and accurate results, as demonstrated in single laboratory validation studies by the Metropolitan Water Reclamation District of Greater Chicago, an interlaboratory study managed by Environment Canada, and an ASTM "round-robin" (interlaboratory) validation study. These studies generally showed total and acid dissociable cyanide recoveries from samples between 90% and 110%, and relative standard deviations of less than 10%. The reported lower limit of detection is 0.5 µg/L.

For determination of total cyanide, Kelada-01 can be configured to use UV-irradiation under alkaline conditions (alkaline mode) or acidic conditions (acidic mode). EPA has reviewed data on recoveries of free cyanide and complex cyanides from a variety of wastewater matrices in both modes. Given the successful recovery of cyanide complexes from a variety of effluents, opacity does not appear to effect the recovery of cyanide complexes. In addition, side-by-side comparative data on high particulate samples (*e.g.*, sludge) in the article *Automated Direct Measurements of Total Cyanide Species and Thiocyanate, and their Distribution in Wastewater and Sludge* (Journal WPCF, 61–3, pp. 350–56, March 1989) demonstrating Kelada-01's superior recovery of cyanide (relative to manual distillation) when running in alkaline mode, supporting the conclusion that particulate cyanide recovery is not a concern with this method. Corresponding data for use in acidic mode is not available. However, EPA requests comment on whether the use of Kelada-01 for determination of total cyanide should be restricted to alkaline mode or should allow determinations in both alkaline and acidic mode.

A copy of Kelada-01 and the method validation study report are in the docket for this proposed rule. In addition, copies of Kelada-01 are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 [Order Number PB 2001–108275]. Phone: 800–553–6847.

d. Phenolics in Bleach Plant Filtrate by Gas Chromatography–Mass Spectrometry (GC–MS)

NCASI Method CP–86.07, "Chlorinated Phenolics in Water by *In situ* Acetylation and GC/MS Determination" (January 2002) for determining chlorinated phenols, chlorinated guaiacols, chlorinated catechols, chlorinated benzaldehydes (*i.e.*, vanillins and syringaldehydes), and trichlorsyringol in bleach plant filtrate is an ATP to EPA Method 1653. The complete list of analytes to which Method CP–86.07 is applicable is provided in the method.

A 300-mL aliquot of aqueous sample is spiked with internal standards and surrogates and is treated to form phenolate ions at a pH of 9 to 11.5. The phenolate ions are converted *in situ* (*i.e.*, in the aqueous matrix) to their acetate derivatives which are then extracted with hexane. The extract is analyzed using GC/MS.

EPA is proposing Method CP–86.07 specifically for use under the regulations at 40 CFR part 430 (for the pulp and paper industry). NCASI Method CP–86.07 was developed to reduce analytical costs (by $200 to $300 per analysis) and the need for several isotopically labeled standards, reduce sample and reagent volumes (*e.g.*, sample volume is reduced over 300% from EPA Method 1653), and addresses certain interferences in pulp and paper effluent. With regard to performance, participants in a four-laboratory validation study met the quality control (QC) acceptance criteria specified in EPA Method 1653, demonstrating equivalent performance.

NCASI Method CP–86.07 is available from the Publications Coordinator, NCASI, P.O. Box 13318, Research Triangle Park, NC 27709–3318. Phone 919–588–1987. You can also find a copy of the method and the validation study report in the docket for this proposed rule.

2. Whole Effluent Toxicity Alternate Test Procedure—Microtox® 1010

By today's notice, EPA invites comments on whether to approve a standardized testing procedure measuring acute toxicity of aqueous test samples to bacteria. Specifically, in response to a request from Strategic Diagnostics, Inc. (SDI), EPA requests comment on whether to approve, under 40 CFR part 136, SDI's "Method for Measuring the Acute Toxicity of Wastewater and Receiving Water with the *Vibrio fischeri* (NRRL B–11177) Microtox® Test System" (Microtox® 1010) for determining the acute toxicity of wastewater, receiving waters, and other aqueous samples. In this test, multiple, one-milliliter sample dilutions (minimum of five) are added to sample wells containing about one million saltwater bioluminescent bacteria, *Vibrio fischeri* strain NRRL B–11177. The bacterial bioluminescence is a by-product of cellular respiration correlating to organism health, and is measured in each well using a photometer. Measurements at the various dilutions, referenced against a control well, are taken over 15 minutes and used to calculate the concentration at which the organisms manifest a 50% effect (EC_{50}), in this case, a decrease in

bioluminescence. The EC_{50} is the concentration of sample at which a 50% reduction in bioluminescence occurs, and it is analogous to the 50% inhibition concentration (IC_{50}) used in other toxicity tests.

Approval of Microtox® 1010 will add a new phylogenic category which can be used to measure toxicity, specifically bacteria. EPA proposes to approve the use of Microtox® 1010 to screen discharges to freshwater for acute toxicity. EPA invites comment on the appropriateness of including a bacteriological test to measure toxicity for regulation in permits. EPA also invites comments on two options for the use of Microtox® 1010 in discharges to marine and estuarine waters.

Advantages of Microtox® 1010 Relative to Other Toxicity Test Methods

Microtox® 1010 may be useful as a screening level test for discharges to both freshwater and marine and estuarine waters when it is used in conjunction with EPA's current whole effluent toxicity (WET) test methods.

Microtox® 1010 also may be useful as a definitive test for discharges to marine and estuarine waters. The Microtox® 1010 method employs a very large number of organisms (one million bacteria), and as such, the test is not influenced by the responses of a small number of test organisms. The method requires small sample volumes, making the collection and shipment of samples simpler and more affordable. The analysis time is short (15 minutes), and the method is relatively inexpensive ($50–$150, compared to $300–$600 for the currently approved acute toxicity tests).

While Microtox® 1010 would be an addition to the suite of EPA WET methods, the technology is not new. Extensive research and validation have been conducted using *Vibrio fischeri*, culminating in more than 350 peer-reviewed papers (including 17 authored by EPA staff) and adoption of ASTM Standard D5660–96, "Standard Test Method for Assessing the Microbial Detoxification of Chemically Contaminated Water and Soil Using a Toxicity Test with a Luminescent Bacterium." In response to previous EPA concerns about a lack of information on Microtox® 1010 (see a Supplementary Information Document [Response-to-Comments Document] from the 1995 WET rule [60 FR 53529, 53536; October 16, 1995]), SDI's predecessor, Azur Environmental, conducted a validation study (ATP Application SL97–0002).

Approval of Microtox® 1010 for measurement as a pollutant parameter under 40 CFR part 136 would allow toxicity evaluation to be expanded to an important phylogenetic group and trophic level that is not now addressed in the WET program. Bacteria are ecologically relevant links in nutrient and energy cycling and, consequently, are generally important to assessing the health of the environment.

EPA anticipates, however, there are some limitations for using the Microtox® 1010 method for WET testing which are discussed below.

Limitations

Adding Microtox® 1010 to the suite of WET test procedures poses challenges for the National Pollutant Discharge Elimination System (NPDES) WET program. First, Microtox® 1010 employs a saltwater bacterium, and therefore, the salinity of the samples to which the method is applied needs to be adjusted to near that of seawater to avoid artificial stressors to the test organisms. As such, the modified sample may not represent the characteristics of the actual effluent.

Second, Microtox® 1010 is less sensitive to some common contaminants (certain metals and ammonia) than the currently approved WET procedures. Conversely, Microtox® 1010 may be more sensitive than the currently approved WET procedures to other sources of toxicity, for example, sulfur and sulfur compounds. Currently, EPA guidance in the "Technical Support Document for Water Quality-based Toxics Control" (TSD, 1991) recommends that initial effluent testing using species from three different phyla for the purpose of identifying the most sensitive test species. Bacteria would be a fourth phylum. EPA is concerned that economic pressure to implement a cheaper and quicker test (*e.g.*, Microtox® 1010) may cause some regulatory authorities to abandon the recommended guidance for initial testing and selection of the species that is most sensitive to the toxicity of a particular effluent. For these reasons, EPA also invites comment on the following uses of the Microtox® 1010 test to measure samples and protect water quality.

Use in Discharges to Freshwater

Using the Microtox® 1010 to evaluate discharges to freshwaters may not be appropriate, because the required salinity adjustment itself could affect the toxicity of the sample, and the salinity of the adjusted sample would not represent either the effluent being discharged or the receiving water.

Therefore, EPA invites comment on the use of Microtox® 1010 as a "screening" test for freshwater. Under this approach, NPDES permits for discharges to freshwater would not set limits based on acute toxicity to bacteria determined by the Microtox® 1010 test. Instead, the test would be used to provide a "snapshot" for toxicity potential of uncharacterized test samples to decide whether further toxicity evaluation seems warranted. For example, EPA anticipates the test would be very useful in situations where test samples display intermittent toxicity or for a toxicity reduction evaluation (TRE). Alternatively, operators of POTW pretreatment programs could use the test for rapid analysis of the toxicity of samples from users of the POTW. For these uses, EPA would not need to approve the Microtox® 1010 test for use in 40 CFR part 136.

Use in Discharges to Marine and Estuarine Water

EPA is considering two options for the use of Microtox® 1010.

Option (1)—Use as a Screening Procedure

Under this option, Microtox® 1010 would be implemented for discharges to marine and estuarine water in the same manner as proposed for discharges to freshwater. As such, EPA would not need to approve the test for use under 40 CFR part 136.

Option (2)—Use as a Definitive Test

Under this option, the Microtox® 1010 test would be used to establish NPDES permit limits (in lieu of other WET test procedures) if the Microtox® 1010 test organisms are the most sensitive in detecting toxicity of a given test sample. This option would rely on bacteria as an additional phylogenetic group by which to evaluate a sample's toxicity. To assist EPA in determining whether to incorporate bacteria as an additional phylogenetic group for which toxicity should be evaluated, the Agency invites comment on whether adjusting the salinity of discharges to marine and estuarine waters inappropriately introduces a variable to the measurement of acute toxicity.

EPA solicits comments on all aspects of the Microtox® 1010 proposal, but is particularly interested in comment on the following issues.

- What is the most appropriate for the use of Microtox® 1010 with marine and estuarine waters? A screening test? A definitive test? Both? Neither?
- Should the use of Microtox® 1010 be precluded where toxicity in discharges is known to be due primarily to metals and/or ammonia?

• Should EPA approve this proprietary test procedure? EPA does not generally endorse particular products or services. If EPA does approve use of Microtox® 1010 under 40 CFR part 136, how should the Agency reflect the essential attributes of the test that are not proprietary if it promulgates a final regulation approving the procedure?

• Will the regulated community require additional guidance from EPA regarding the implementation of Microtox® 1010 in the WET monitoring scheme?

• Should testing with Microtox® 1010 and three other species in the currently approved WET test procedures (*e.g.*, fish, invertebrates, and plants) be conducted quarterly for one year to address concerns of sensitivity to metals, ammonia, and/or unidentified toxicants?

• Are there additional bacteria-based methods that EPA should consider?

A copy of Microtox® 1010 and the method validation study report are in the docket for this proposed rule. In addition copies, of Microtox® 1010 are available from Strategic Diagnostics, Inc., 111 Pencander Drive, Newark, DE 19702–3322, Phone: 800–544–8881, Fax: 302–456–6789.

3. New Methods and Method Practices Proposed on October 18, 1995

The methods that EPA proposes to approve in NPDES regulations at 40 CFR part 136 include technologies that have been in use for many years. Many of the methods have been used in the NPDES monitoring program on a limited basis or have been used in other EPA programs (such as the NPDWR program). Among the methods EPA proposes to approve are a group of methods (or earlier revisions of the methods) that EPA initially proposed for approval on October 18, 1995 (60 FR 53987, hereinafter referred to as the "10–18 proposal"). Although EPA did not take final action on the 10–18 proposal, NPDES-approval for these methods has been granted to individual applicants on a case-by-case basis under the ATP program provisions at 40 CFR 136.4 and 136.5.

EPA proposes these methods again (along with updated equivalent methods), instead of publishing a final rule, because over eight years have passed since EPA's initial proposal and a significant quantity of new valuable information on the effectiveness of these methods in NPDES monitoring has become available, based on the use of these methods by many laboratories. The information on the success (or failure) of these methods in environmental laboratories is relevant to determining whether these methods should be promulgated at 40 CFR part 136. Therefore, EPA requests any relevant information on the performance of these methods.

Furthermore, the 10–18 proposal was published before enactment of the National Technology Transfer Advancement Act (NTTAA) of 1996. NTTAA requires EPA to consider standards developed by voluntary consensus standards bodies (VCSBs). EPA considers it appropriate to consider the VCSB methods described later in this preamble (many of which were revised after the 10–18 proposal), along with the other methods EPA is proposing to approve.

EPA intends to consider comments submitted on this proposal only when formulating the final rule. To the extent that anyone believes that comments submitted in response to the 10–18 proposal are still relevant, and wants EPA to consider them, such comments should be resubmitted in response to today's proposal.

a. Total Recoverable Elements Digestion

EPA proposes a broad-purpose digestion procedure (as described in EPA Method 200.2) for "total recoverable" elements for use with:

• Inductively Coupled Plasma-Atomic Emission Spectroscopy (ICP–AES)

• Inductively Coupled Plasma-Mass Spectroscopy (ICP–MS)

• Stabilized Temperature Graphite Furnace Atomic Absorption Spectroscopy (STGFAA), and

• Flame Atomic Absorption Spectroscopy (FLAA) methods.

The total recoverable procedure uses a combination of nitric and hydrochloric acids (*aqua regia*) to prepare samples for analysis and is compatible with several measurement techniques. This generally allows laboratories to save some cost by reducing preparations and increasing flexibility in their choice of analytical techniques after digestion. The total recoverable digestion is less labor intensive than the approved (and equivalent) "total" digestion method described in *Methods for Chemical Analysis of Water and Wastes* (MCAWW) "Metals (Atomic Absorption Methods)" Section 4.1.3, while providing equivalent recovery of metals.

The total recoverable digestion procedure was incorporated into EPA Methods 200.7 (ICP–AES), 200.8 (ICP–MS) and 200.9 (STGFAA). It is published as the stand-alone Method 200.2, "Sample Preparation Procedure for Spectrochemical Determination of Total Recoverable Elements' (Rev. 2.8, 1994). EPA proposes total recoverable digestion for 200.7, 200.8, and 200.9 and allows the use of Method 200.2 as a digestion procedure in measuring some pollutants by FLAA, and VCSB-equivalents to EPA Methods 200.7, 200.8, and 200.9. However, Method 200.2 is not proposed for use with any standard GFAA methods due to the potential chloride interference. For GFAA methods, the total nitric acid digestion must be used.

The digestion procedure has been tested on various matrices using EPA Methods 200.7, 200.8 and 200.9 and has been found comparable to previously approved NPDES preparation procedures. Also, a joint EPA/AOAC International study of Method 200.8 provided further interlaboratory validation of the procedure.

b. Elements by ICP–MS

EPA proposes a multielement test procedure, Method 200.8 "Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry" (Revision 5.4, 1994) for the detection and quantification of 20 metals in aqueous wastewater samples. Method 200.8 has been used in the NPDES program through ATP approvals, and has been used in the NPDWR program for many years.

Method 200.8 determines elements using ICP–MS. Sample material in solution is introduced by pneumatic nebulization into a radio-frequency plasma where energy transfer processes cause desolvation, atomization, and ionization. The ions are extracted from the plasma through a differentially pumped vacuum interface and separated on the basis of their mass-to-charge ratio by a quadrupole mass spectrometer having a minimum resolution capability of 1 amu peak width at 5% peak height. The ions transmitted through the quadrupole are registered by an electron multiplier or Faraday detector, and the ion information is processed by a data handling system. Interferences relating to the technique are to be identified, and the results corrected accordingly. Such corrections must compensate for isobaric elemental interferences and interferences from polyatomic ions derived from the plasma gas, reagents or sample matrix. Instrumental drift, as well as suppressions or enhancements of instrument response caused by the sample matrix, are to be corrected by using internal standards.

EPA developed ICP–MS Method 200.8 under a contract and in cooperation with AOAC International, and

conducted a joint interlaboratory validation study of the method. The method description includes a list of the elements to which the method applies, sample collection practices, recommended analytical conditions, quality control practices, instrumental and method detection limits, and performance criteria based on the interlaboratory study data.

EPA also is proposing to approve VCSB methods that are equivalent to EPA Method 200.8: AOAC Method 993.14 [16th Edition], and ASTM Method D5673–02. These methods should provide performance similar to that obtained with Method 200.8.

c. Elements by STGFAA

EPA proposes a new multi-element test procedure, Method 200.9 "Determination of Trace Metals by Stabilized Temperature Graphite Furnace Atomic Absorption" (Revision 2.2, 1994) for the detection and quantification of 16 metals in aqueous wastewater samples. Method 200.9 has been used in the NPDES program through ATP approvals, and it has been used in the NPDWR program for many years.

Method 200.9 determines elements by stabilized temperature graphite furnace atomic absorption spectroscopy (STGFAA). In STGFAA, the sample and required matrix modifier are first pipetted onto the platform or a device which provides delayed atomization. The sample is then dried at a relatively low temperature (120 °C) to avoid spattering. Once dried, the sample is normally pretreated in a char or ashing step which is designed to minimize the interference effects caused by the sample matrix. After the char step, the furnace is allowed to cool prior to atomization. The atomization cycle is characterized by rapid heating of the furnace to a temperature where the metal (analyte) is atomized from the pyrolytic graphite surface. The resulting atomic cloud absorbs the element specific atomic emission produced by a hollow cathode lamp or a electrodeless discharge lamp.

Because the resulting absorbance usually has a nonspecific component (*e.g.*, black body radiation) associated with the actual analyte absorbance, an instrumental background correction device is necessary to subtract from the nonspecific component from the total signal. In the absence of interferences, the background corrected absorbance is directly related to the concentration of the analyte. Interferences relating to suppression or enhancement of instrument response caused by the sample matrix, is to be corrected by the method of standard addition.

The method description includes sample collection practices, recommended analytical conditions, quality control practices, method detection limits, and performance. Single laboratory studies show that Method 200.9 achieves performance comparable to ICP–AES and ICP–MS methods. In addition, Method 200.9 can achieve lower detection levels than ICP–AES methods (for all analytes in common between the methods), and ICP–MS methods (for certain analytes).

d. Hexavalent Chromium by Ion Chromatography

EPA proposes Method 218.6 "Determination of Dissolved Hexavalent Chromium in Drinking Water, Groundwater, and Industrial Wastewater Effluent by Ion Chromatography" (Revision 3.3, 1994) for determination of hexavalent chromium. The NPDES program has used Method 218.6 through interim approvals.

Method 218.6 uses ion chromatography (IC) to determine hexavalent chromium (Cr(VI)) in samples. An aqueous sample is filtered through a 0.45 µm filter, and the filtrate is adjusted to a pH of 9 to 9.5 with a buffer solution. A measured volume of sample (50–250 µL) is introduced into the ion chromatograph. A guard column is employed to remove organics from the sample prior to separation of Cr(VI) as CrO_4^{2-} on an anion exchange separator column. Cr(VI) is determined by post column derivatization with diphenylcarbazide and passing through a low-volume flow-through cell for detection of the colored complex with a visible lamp detector at 530 nm.

Cooperating with ASTM Committee D–19 on Water, EPA conducted an interlaboratory validation study of EPA Method 218.6. The method description includes sample collection practices, recommended analytical conditions, quality control practices, method detection limits for Cr(VI), and performance criteria. The Method MDL in reagent water was 0.4 µg/L, twenty-five times lower than the DL for currently approved EPA Method 218.4, and performance was comparable to the currently approved method. For example, according to regression equations generated with data from the multilaboratory validation study, analyses of a 50 µg/L fortified reagent water sample would produce an average recovery of 103% and a relative standard deviation (RSD) of 5%.

ASTM, Standard Methods, and AOAC–International have approved this method as a standard test method under their consensus systems and have published it in their manuals of methods as follows: ASTM Method D5257–97, Standard Methods Method 3500–Cr C [20th Edition] and 3500–Cr E [18th, 19th], and AOAC Method 993.23 [16th Edition]. All three of these methods were derived from EPA Method 218.6 and are being proposed for approval.

e. Anions by Ion Chromatography

EPA proposes Method 300.0 "The Determination of Inorganic Anions in Water by Ion Chromatography," (Revision 2.1, August 1993) for determination of common anions—bromide, chloride, fluoride, nitrate-N, nitrite-N, ortho-phosphate, and sulfate—in wastewater. Method 300.0 has been used for many years in the NPDWR program and in the NPDES program through interim approvals.

EPA Method 300.0 measures common anions using ion chromatography. A water sample is injected into a stream of carbonate-bicarbonate eluent and passed through a series of ion exchangers. Anions are separated on the basis of their relative affinities for a low capacity, strongly basic anion exchanger (guard and separator columns). The separated anions are directed through a hollow fiber cation exchanger membrane (fiber suppressor) or micromembrane suppressor bathed in continuously flowing strong acid solution (regenerant solution). In the suppressor, the separated anions are converted to their highly conductive acid forms, and the carbonate-bicarbonate eluent is converted to weakly conductive carbonic acid. The separated anions in their acid forms are measured by conductivity. They are identified on the basis of retention time as compared to reference standards. Quantitation is by measurement of peak area or peak height.

Cooperating with ASTM Committee D–19 on Water, EPA conducted an interlaboratory validation study of EPA method 300.0. The method includes results of the study, sample collection practices, recommended analytical conditions, quality control practices and estimated detection limits for the applicable analytes, and performance criteria. The method MDLs are lower than currently approved colorimetric methods, and performance was comparable to currently approved methods, with recovery falling within the 90–110% range and precision surpassing 10% RSD for all analytes in the working range of the method (mid-point of the calibrated range).

ASTM, Standard Methods, and AOAC-International approved and published the method under their consensus systems. EPA proposes approval of these following equivalents to EPA Method 300.0: ASTM Method D4327–97 and –03, Standard Method 4110 B [18th, 19th and 20th Ed.], and AOAC Method 993.30. EPA also is proposing EPA Method 300.1 "Determination of Inorganic Anions in Drinking Water by Ion Chromatography," now approved for NPDWR compliance monitoring, and which falls within the inherent flexibility (*i.e.*, is equivalent to) Method 300.0. This will further consistency among EPA monitoring programs.

f. Nitrate and Nitrite by Colorimetry

EPA proposes the use of automated and manual cadmium reduction methods for the determination of nitrate and nitrite, singly. Specifically, EPA proposes that EPA Methods 353.2, Standard Methods 4500–NO_3–E and F [18th, 19th, 20th] and 4500–NO_3–E and F (2000), ASTM Methods D3867–99(A) and (B), and I–4545–85 be used to determine nitrate and nitrite singly, as well as in combination, in NPDES compliance monitoring. Using these methods, "nitrate+nitrite" can be determined by passing the sample through a cadmium reduction column (converting nitrate to nitrite for final analysis), and that the column can be by-passed to determine nitrite singly. With both of these values, nitrate can be determined by subtracting "nitrite" from "nitrate+nitrite." This proposal is consistent with NPDWRs that allow cadmium reduction-based methods for nitrate+nitrite to measure nitrate and nitrite singly (see 40 CFR 141.23).

With regard to performance of automated methods, multi-laboratory data for EPA Method 353.2 indicates that analysis of a 1 mg/L nitrate sample will provide an average recovery of 100%, and a relative standard deviation (RSD) of 5.4%. Manual methods provide similar performance, with 4500–NO_3–E demonstrating an average recovery of 100% and RSD of 1% in single laboratory studies at concentrations near 1 mg/L. The equivalent versions of these methods published by other organizations should provide equivalent performance, given that they employ the same chemistry and procedures.

g. Chlorine by Low Level Amperometry

EPA proposes Standard Method 4500–Cl E [18th Ed.] and proposes 4500–Cl E [19th and 20th Ed.] and 4500–Cl E (2000) for the detection and quantification of low levels of chlorine in water (all editions are essentially the same). Method 4500–Cl E is a minor modification of the approved amperometric Method 4500–Cl D and can measure down to 10 µg/L chlorine. Federal and state permitting authorities requested such a method so they can assess compliance with effluent limits based on EPA and state water quality criteria for chlorine. You can find supporting performance data for the method at Journal of the Water Pollution Control Federation, Vol. 51, pages 2636–2640 (1979), a copy of which is included in the docket for this proposal.

h. Updated Versions of Currently Approved EPA Methods

In 1993 and 1994, EPA updated a number of methods from the "Methods for the Chemical Analysis of Water and Wastes" (MCAWW) manual, and Method 200.7 (printed at 40 CFR part 136, Appendix A). For the most part, these updates were technically equivalent to previously approved versions, but offer the advantages of a consistent Environmental Monitoring Management Council (EMMC—an EPA committee consisting of EPA managers and scientists) format and explicit QC requirements which should result in improved data quality. Many of the versions are approved for NPDWR monitoring, so approval of these methods will further the goal of consistency among EPA monitoring programs. Finally many of these methods explicitly allow performance-based modifications, thereby increasing method flexibility.

All these methods, listed in Table I, were included in the 10–18 proposal. EPA proposes the approval of these additions and withdrawal of the old MCAWW versions.

TABLE I.—UPDATED REVISIONS PROPOSED IN 10–18–95

Parameter	Updated revisions		Currently approved revision (to be withdrawn)	
	Method	Revision	Method	Revision
Turbidity	180.1	Revision 2.0, August 1993*	180.1	1978
Multiple Metals	200.7	Revision 4.4, 1994*	200.7	1990
Mercury	245.1	Revision 3.0, 1994*	245.1	1974
Total Cyanide†	335.4	Revision 1.0 August 1993*	335.3	1978
Ammonia	350.1	Revision 2.0, August 1993	350.1	1978
TKN	351.2	Revision 2.0, August 1993	351.2	1978
Nitrate-Nitrite	353.2	Revision 2.0, August 1993*	353.2	1978
Phosphorus (all forms)	365.1	Revision 2.0, August 1993*	365.1	1978
Sulfate	375.2	Revision 2.0, August 1993*	375.2	1978
COD	410.4	Revision 2.0, August 1993	410.4	1978
Phenols	420.4	Revision 1.0, August 1993	420.2	1974

*Currently approved for use in NPDWR or NSDWR monitoring

†**Note:** EPA Method 335.4 is technically equivalent to the currently approved version of Method 335.3 when Method 335.3 is run in compliance 40 CFR 136.3, Table IB—Note 20 (specifically requiring the manual digestion of cyanide samples; if compared method-to-method, the procedures are quite different). However, as currently written, the sulfide removal procedure in Method 335.4 could lead to removal of particulate cyanide from the sample prior to analysis. Therefore, EPA proposes to add a footnote to the table to clarify the proper procedure for removing sulfide interferences. The footnote will require analysts to reconstitute samples treated for sulfide so that particulates are distilled along with the liquid sample.

Because these new versions of methods contain QC requirements (not previously included), and detection limits may have changed, EPA is particularly interested in comments regarding the ability of laboratories to achieve the specified QC requirements and detection limits.

EPA also requests comments on any additional costs that laboratories expect they might incur to comply with the QC requirements specified in the methods. EPA believes that many laboratories are already using thorough QC programs to ensure the reliability of the results they

report, particularly for those methods already approved for NPDWR or NSDWR monitoring. EPA expects that any additional costs will be at least partially offset by the increased flexibility in these revisions (which explicitly allow analysts to reduce costs by introducing cost-effective innovations).

4. New EPA Methods

a. Mercury by CVAFS

EPA proposes Method 245.7, "Mercury in Water by Cold Vapor Atomic Fluorescence Spectrometry" [December 2003] (EPA–821–D–03–001) for measuring mercury (Hg) in wastewater. Method 245.7 provides reliable measurements of mercury at EPA water quality criteria levels. The method employs cold-vapor atomic fluorescence spectrometry (CVAFS), a brominating digestion creating minimal interference, and ultra-pure argon as the carrier gas. Samples are oxidized by a potassium bromate/potassium bromide reagent, sequentially pre-reduced with NH_2OHCl to destroy excess bromine, and the ionic mercury reduced with $SnCl_2$ to convert Hg(II) to volatile Hg(0). Hg(0) is then separated from solution by purging with high purity argon gas through a semi-permeable dryer tube. Once the Hg(0) passes into the inert argon gas stream, it is carried into the CVAFS detector cell to determine mercury concentration.

Method 245.7 is similar to EPA Method 1631 "Mercury in Water by Oxidation, Purge and Trap, and CVAFS," originally promulgated on June 8, 1999 (64 FR 30434), for the NPDES program. Both methods use a CVAFS detector to measure low levels of mercury. Method 245.7 uses a liquid-gas separation and a dryer tube for analyte isolation, while Method 1631 uses a purge and gold trap isolation procedure. This difference makes Method 245.7 a low cost alternative to Method 1631 for measurement of trace-level mercury using CVAFS technology. For that reason, the Association of Metropolitan Sewerage Agencies (AMSA) petitioned the Agency to approve this alternative method. In response, EPA conducted a multi-laboratory validation of this method in 2001 to assess the method's performance.

During this validation study, the method was tested on a variety of matrix types. In reagent water analyses performed in eight laboratories, average recoveries range between 85% to 105%, and relative standard deviations (RSDs) were below 15%. Percent recoveries in matrix spike/matrix spike duplicate industrial and municipal effluent samples ranged from 64% to 120%. The reported method detection limit is 5.0 ng/L based on the data from the eight participating laboratories. Following this study, Method 245.7 was updated to include the resulting performance criteria and to conform with recent EPA guidelines regarding contamination control.

Method 245.7 is available at *http://www.epa.gov/waterscience/methods/*. In addition, copies of the method and of the interlaboratory validation study report are in the docket supporting this proposal.

In addition to proposing EPA Method 245.7, EPA is soliciting comment on requirements for sample collection when using this method. On October 29, 2002, EPA promulgated a footnote at 40 CFR part 136 that includes sample preservation and storage requirements for samples collected for the determination of mercury using EPA Method 1631. This footnote states that: "Samples collected for the determination of trace level mercury (100 ng/L) using EPA Method 1631 must be collected in tightly-capped fluoropolymer or glass bottles and preserved with BrCl or HCl solution within 48 hours of sample collection. The time to preservation may be extended to 28 days if a sample is oxidized in the sample bottle. Samples collected for dissolved trace level mercury should be filtered in the laboratory. However, if circumstances prevent overnight shipment, samples should be filtered in a designated clean area in the field in accordance with procedures given in Method 1669. Samples that have been collected for determination of total or dissolved trace level mercury must be analyzed within 90 days of sample collection." EPA is requesting comments and data demonstrating whether this footnote should or should not also be applied to Method 245.7.

5. New Voluntary Consensus Standard Bodies (VCSB) Methods

VCSB organizations asked EPA to approve several new VCSB methods for NPDES monitoring. In response to these requests, EPA proposes approval of the following VCSB methods. Some of the methods proposed are used in EPA monitoring programs today and/or have been approved as limited-use alternate test procedures.

a. Available Cyanide by Ligand Exchange-FIA

ASTM Method D6888–03 determines available cyanide (equivalent to "cyanide amenable to chlorination") using ligand exchange followed by flow injection analysis using gas diffusion separation and amperometric detection. It is very similar to the currently approved Method OIA–1677 (promulgated on December 30, 1999, 64 FR 73414).

Method D6888–03 was validated in an extensive intralaboratory study using several natural and industrial water matrices, and a 10-laboratory study using synthetic wastewater. Recoveries of potassium nickel cyanide and mercury (II) cyanide, the two strongest available cyanide complexes, ranged from 89.9 to 99.6% and 82.9 to 99.3%, respectively (in samples fortified to 100 µg/L as CN^-).

Method D6888–03 states that either nickel cyanide or mercury (II) cyanide may be used to prepare quality control samples. However, for the purposes of NPDES compliance monitoring, EPA is proposing that only mercury (II) cyanide be used. Mercury (II) cyanide is a stronger complex than nickel cyanide (as evidenced by the slightly lower recoveries cited above), and, therefore, provides the most rigorous test for method performance. Currently approved Method OIA–1677 also specifies use of mercury (II) cyanide for the same reason.

In addition, two issues have come to EPA's attention regarding the use of ligand exchange-amperometric detection methods for available cyanide. EPA seeks comment on both of these issues. First, EPA has received information suggesting that sulfide at levels below those detected with the lead acetate paper may produce false positive signals on the amperometric detection systems used in D6888–03 and OIA–1677 (see Zheng *et al.* "Evaluation and Testing of Analytical Methods for Cyanide Species in Municipal and Industrial and Contaminated Waters," Environ. Sci. Technol. 2003, 37, 107–115). Lead acetate paper generally recommended for screening for the presence of sulfide interferences in cyanide methods, but the paper will not detect sulfides below approximately 5 ppm. For this reason, analysts suspecting a sulfide interference should test their sample with a more sensitive sulfide procedure and treat the sample accordingly. Appropriate test procedures for this purpose include the ion selective electrode (ISE) ASTM Method D4658–92(1996) and Standard Method 4500–S2–G which are proposed for use in today's rule.

Second, EPA's National Enforcement Investigation Center (NEIC) laboratory has found that when samples that contain significant solids are analyzed

by OIA–1677, particles in the sample can settle out in the sample apparatus and also can clog the flow-injection system. As a result, measurements of cyanide in samples containing particulates decrease as the samples are allowed to stand in the sample tubes, and decrease as the system clogs. This decrease could be due to a number of factors, such as adsorption of released cyanide onto particulate or re-complexation of released cyanide with metals. This settling and clogging may be a problem in other similar cyanide-measurement systems that contain a rack of sample tubes, because the particles can settle during the time that the samples sit in these tubes. Suggested solutions to the problem are to (1) limit methods that use a rack of sample tubes to measurement of dissolved cyanide only; *i.e.*, samples that have been filtered through a 0.45-micron filter to remove particles, (2) to limit these methods to analysis of one sample at a time so that the settling cannot occur, (3) to limit the time between addition of the ligand-exchange reagents and the time of analysis to preclude settling, or (4) to require sample agitation during storage in the sample rack. EPA solicits comment on the problem, on the proposed solutions and on other possible solutions, and seeks data further characterizing the conditions under which the problem occurs and any solution(s) to the problem.

b. Cations by Ion Chromatography

ASTM International Standard Test Method D 6919–03, "Determination of Dissolved Alkali and Alkaline Earth Cations and Ammonium in Water and Wastewater by Ion Chromatography," applies to the simultaneous determination of dissolved inorganic alkali and alkaline earth cations and the ammonium cation in reagent water, drinking water, and wastewaters by suppressed and non-suppressed ion chromatography. While alkali and alkaline earth cations can be determined by alternative techniques such as AAS or ICP, ammonium cation in the same sample must be measured separately by a wet chemical technique such as colorimetry, titrimetry, or ammonia-selective electrode. Ion chromatography in a single automated run can determine ammonium plus all of the important inorganic cations including lithium, sodium, potassium, magnesium and calcium.

The cationic analytes are injected into a dilute acid eluent and separated by differential retention as they flow through guard and analytical columns packed with a low-capacity cation-exchange material. The separated cations are detected using conductivity detection, which is most sensitive when the background signal arising from the eluent has the lowest possible noise. One means to achieve low background noise is to combine the conductivity detector with a suppressor device that reduces the conductance of the eluent (*i.e.*, background noise) and also transforms the separated cations into their more conductive corresponding bases. Detection can also be achieved without chemical suppression, whereby the difference between the ionic conductance of the eluent and analyte cation is measured directly after the analytical column. This test method includes both suppressed and non-suppressed detection technologies.

A total of fourteen laboratories, employing one operator each, contributed data to the test method interlaboratory collaborative study. Three matrices were studied; reagent water, drinking water and wastewater. Each participant prepared and analyzed four Youden pairs for each of the six analytes in each of the three matrices. Analyte recoveries using Method D 6919–03 were determined in the range of 0.5–40 mg/L, with the specific concentration ranges tested for each cation varying slightly within this overall range. Method Detection Limits (MDLs) were confirmed in the 3–38 µg/L range. MDLs obtained by suppressed conductivity were approximately two times lower than the MDLs obtained by non-suppressed conductivity. The precision and recovery data for all analytes in all matrices tested are provided in the method. For example, across all analytes at concentrations of approximately 5 mg/L in drinking water, the range of multilaboratory recovery was 89–103% with relative standard deviation ranging from 4–15%. Quality control limits for the method and the data used to generate them are available in the docket supporting today's proposal.

Standard Test Method D 6919–03 is available from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959, United States. Douglas Later, the ASTM Subcommittee D19.05 Task Group Chairman for Method D 6919–03, can be reached at Dionex Corporation, 500 Mercury Drive, Sunnyvale, CA 94086. Telephone: (408) 481–4253, Fax: (408) 737–2470, e-mail: *Doug.Later@Dionex.com*. Copies of the method and the validation study report are in the docket for today's proposed rule.

c. Chloride by Potentiometry

Standard Method 4500–Cl–D [18th, 19th, and 20th Ed.] and (2000) is used to determine chloride in water by potentiometric titration, using a silver nitrate/solution with a glass and silver-silver chloride electrode system. During titration, an electronic voltmeter is used to detect the change in potential between the two electrodes. The end point of the titration is reached when the instrument reading at which the greatest change in voltage has occurred for a small and constant increment of silver nitrate added. The potentiometric method is a useful alternative to other approved methods when measuring chloride in colored or turbid samples that are not amenable to visual titration. The method also is included in NSDWRs, so its approval for NPDES program will further consistency between the wastewater and drinking water programs.

d. Chloride by Ion Selective Electrode

Method D512–89 (1999) C is a method for determining chloride ion in water by ion selective electrode (ISE). The stated range of the method is 2 to 1000 mg/L. Precision and bias were determined in reagent water and other matrices using a five-laboratory, seven-operator study. Recovery ranged from roughly 93–103% with RSD that generally fell within 5–10%. Additional data are available in the method.

e. Cyanide by Ion Selective Electrode

Standard Method 4500–CN–F [18th, 19th, and 20th Ed.] and (2000), and ASTM Method D2036–98 A, allow for analysis of cyanides, following distillation, using ion selective electrode (ISE) technology. These ISE methods have been used for a number of years in the context of NPDWR compliance monitoring, and have been approved in NPDES monitoring, on a limited-use basis, through the ATP program. Given the common use of these methods, and their ability to overcome certain interferences that could affect approved colorimetric methods, their inclusion at 40 CFR part 136 will be a useful addition to the suite of cyanide methods. Furthermore, the approvals will improve consistency across EPA programs.

ASTM conducted a six-operator, five-laboratory study of the ISE method as applied to reagent water and selected matrices. The effective range of the methods is 0.05–10 mg/L. Performance characteristics of the method are summarized in regression equations reproduced by both methods. As an example of performance, at 0.06 mg–

CN–/L reagent water, the interlaboratory percent recovery was 98% with a relative standard deviation of 14%. The Standard Method is technically identical and, therefore, should provide identical performance.

f. Sulfide by Ion Selective Electrode

Standard Method 4500–S2–G [18th, 19th and 20th Ed.] and ASTM Method D4658–92 (1996) determine sulfide in water using ion selective electrode (ISE). The Standard Method cites an applicable range of 0.032–100 mg/L with a 5% RSD at a concentration of 0.182 mg/L. The ASTM Method cites a range of 0.04–4000 mg/L, and a three-day, six-laboratory study demonstrated concentration variations of 6.5% (for 0.05–1.0 mg/L), 2.5% (1.0–100 mg/L), and 2.0% (100–4000 mg/L). Sulfide ISE methods are unaffected by sample color and turbidity and, therefore, provide a valuable substitute for approved colorimetric methods that may be affected by these interferences.

g. Nitrate by Ion Selective Electrode

Method 4500–NO_3–D [18th, 19th, 20th] and (2000) determines nitrate in water. The method employs an ion selective electrode (ISE) that develops a potential across a porous, inert membrane that holds in place a water-immiscible liquid ion exchanger. The method has a range of about 0.14 to 1400 mg nitrate-N/L, and a precision over the range of 2.5%. Nitrate ISE methods are unaffected by sample color and turbidity and therefore provide a valuable substitute for approved colorimetric methods that may be effected by these interferences. However, these ISE methods are susceptible to interferences due to variations in ionic strength. Therefore, when using these methods, analysts are to ensure that the sample and standard ionic strength match, or the method is to be performed in a way to prevent such interferences (*e.g.*, standard additions).

6. Updated Versions of Currently Approved Analytical Methods

a. EPA WET Methods

This rule proposes, and seeks comment on, an errata sheet for the following methods manuals:

- USEPA. October 2002. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms. Fourth Edition. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA/821/R–02/013. (The "freshwater chronic manual").
- USEPA. October 2002. Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms. Fifth Edition. U.S. Environmental Protection Agency, Office of Water, Washington DC EPA/821/R–02/012. (The "freshwater acute manual").

The errata sheet contains revisions to correct the following typographical errors:

1. Freshwater chronic manual page 274, section 1.10—

$$MSD = 2.36(0.097)[3\sqrt{(1/4)+(1/4)}] = 2.36(0.097)(\sqrt{2/4})$$

The "3" before the square root symbol in the equation above should be removed.

2. Freshwater chronic manual page 274, section 1.11—The value 0.087 should be changed to 0.162.

3. Freshwater chronic manual page 10, section 4.4.1—"* * * The concentration of metals Al, As, Cr, Co, Cu, Fe, Pb, Ni, and Zn, expressed as total metal, should not exceed 1 µg/L each * * *"

4. Freshwater chronic manual page 11, section 4.8.3—"* * * The concentration of total organochlorine pesticides should not exceed 0.15 µg/g wet weight * * *"

5. Freshwater acute manual, section 7.2.3.1 Correct the concentration of selenium from 2 mg/L to 2 ug/L.

b. ASTM Methods

This rule proposes to approve a number of updated ASTM methods in NPDES compliance monitoring. Table II lists the most recently approved versions of the ASTM and the proposed versions for NPDES monitoring, as well as those proposed for NPDWR and NSDWR monitoring (proposed in Section IV.C.2). Copies of all the proposed methods are in the paper docket for review (they are not included in the e-docket due to copyright issues).

All of the proposed methods, except D512–89 (1999) (which is identical to the previous version), incorporate minor technical and/or editorial revisions that improve the methods. Previously approved versions of ASTM methods will remain approved.

TABLE II.—PROPOSED ASTM METHODS

Approved method	Proposed for wastewater	Proposed for drinking water	New method number
D511–93(A)	X	X	D511–03(A)
D511–93(B)	X	X	D511–03(B)
D512–89(A)	X		D512–89(99)(A)
D512–89(B)	X	X	D512–89(99)(B)
D516–90	X	X	D516–02
D858–95(A)	X		D858–02(A)
D858–95(B)	X		D858–02(B)
D858–95(C)	X		D858–02(C)
D859–94	X	X	D850–00
D888–92(A)	X		D888–03(A)
D888–92(B)	X		D888–03(B)
D1067–92	X		D1067–02
D1067–92(B)		X	D1067–02(B)
D1068–96(A)	X		D1068–03(A)
D1068–96(B)	X		D1068–03(B)
D1068–96(C)	X		D1068–03(C)
D1068–96(D)	X		D1068–03(D)
D1125–95(A)	X	X	D1125–95(99)(A)

TABLE II.—PROPOSED ASTM METHODS—Continued

Approved method	Proposed for wastewater	Proposed for drinking water	New method number
D1126–86(92)	X		D1126–02
D1179–93(A)	X		D1179–99(A)
D1179–93(B)	X	X	D1179–99(B)
D1246–95(C)	X		D1246–95(99)
D1252–95(A)	X		D1252–00(A)
D1252–95(B)	X		D1252–00(B)
D1253–86(92)	X	X	D1253–03
D1293–84(90)(A)	X		D1293–99(A)
D1293–84(90)(B)	X		D1293–99(B)
D1293–95		X	D1293–99
D1426–98(A)	X		D1426–03(A)
D1426–98(B)	X		D1426–03(B)
D1687–92(A)	X		D1687–02(A)
D1687–92(B)	X		D1687–02(B)
D1687–92(C)	X		D1687–02(C)
D1688–95(A)	X	X	D1688–02(A)
D1688–95(B)	X		D1688–02(B)
D1688–95(C)	X	X	D1688–02(C)
D1691–95(A)	X		D1691–02(A)
D1691–95(B)	X		D1691–02(B)
D1886–90(A)	X		D1886–94(98)(A)
D1886–90(B)	X		D1886–94(98)(B)
D1886–90(C)	X		D1886–94(98)(C)
D1889–94	X		D1889–00
D1890–90	X		D1890–96
D1943–90	X		D1943–96
D2330–88	X		D2330–02
D2460–90	X	Already Approved	D2460–97
D2972–97(A)	X		D2972–03(A)
D2972–97(B)	X	X	D2972–03(B)
D2972–97(C)	X	X	D2972–03(B)
D3086–90	X		D5812–96 (2002)
D3223–97		X	D3223–02
D3373–93	X		D3373–03
D3454–91	X	Already Approved	D3454–97
D3557–95(A)	X		D3557–02(A)
D3557–95(B)	X		D3557–02(B)
D3557–95(C)	X		D3557–02(C)
D3557–95(D)	X		D3557–02(D)
D3558–94(A)	X		D3558–03(A)
D3558–94(B)	X		D3558–03(B)
D3558–94(C)	X		D3558–03(C)
D3559–96(A)	X		D3559–03(A)
D3559–96(B)	X		D3559–03(B)
D3559–96(C)	X		D3559–03(C)
D3559–96(D)	X	X	D3559–03(D)
D3590–89(A)	X		D3590–02(A)
D3590–89(B)	X		D3590–02(B)
D3645–93(88)(A)	X		D3645–03(A)
D3645–93(88)(B)	X		D3645–03(B)
D3645–97(B)		X	D3645–03(B)
D3649–91		X	D3649–98a
D3697–92		X	D3697–02
D3859–98(A)	X	X	D3859–03(A)
D3859–98(B)	X	X	D3859–03(B)
D3867–90(B)	Already Approved	X	D3867–99(B)
D3972–97		X	D3972–02
D4107–91		X	D4107–98 (2002)
D4190–94	X		D4190–99
D4327–97	Proposed Today	X	D4327–03
D4382–95	X		D4382–02
D4657–92	X		D4657–92 (1999)
D4785–93	X	X	D4785–00a
D5174–97	X	X	D5174–02
D5317–93		X	D5317–98 (2003)

c. Standard Methods

This rule proposes to approve a number of updated Standard Methods in NPDES compliance monitoring; methods previously approved will continue to be applicable for compliance monitoring. Previously, USEPA has referenced approved Standard Methods using the edition of *Standard Methods for the Examination of Water and Wastewater* in which they were published. However, Standard Methods will now distribute methods on-line (likely in addition to printed volumes), so the option of only referencing an edition will not be practical.

For this reason, EPA will use a new numbering system to track the approved versions of Standard Methods. To indicate which version of the method is approved, the date of approval of a section by the Standard Method Committee will be used. For example, 2120 B–01 indicates the version of 2120 B approved by the Standard Methods Committee in 2001. The Committee Approval Date for a Standard Methods Section (*e.g.*, Section 2120) is provided in a footnote at the beginning of the Section.

Table III lists the most recently approved versions of the Standard Methods and the proposed versions for NPDES monitoring, as well as those proposed for NPDWR and NSDWR monitoring (proposed in Section IV.C.3). While a number of methods contain no changes from previously approved version, some incorporate minor technical and editorial revisions to improve user-friendliness, update references, and correct errors. Methods that were revised from previous versions are indicated on the table. Previously approved versions of Standard Methods will remain approved. Copies of all the proposed methods are in the paper docket for review (they are not included in e-docket due to copyright issues), see Section IV.C.2.

TABLE III.—PROPOSED STANDARD METHODS

Revised from standard methods [most recent approved version]	revised	proposed for wastewater	proposed for drinking water	New number
2120 B [20th]	X	X	X	2120 B–01
2130 B [20th]		X		2130 B–01
2150 B [20th]			X	2150 B–97
2310 B [20th]		X		2310 B–01
2320 B [20th]		X	X	2320 B–97
2340 B [20th]	X	X		2340 B–97
2510 B [20th]	X	X	X	2510 B–97
2540 B [20th]		X		2540 B–97
2540 C [20th]		X	X	2540 C–97
2540 D [20th]		X		2540 D–97
2540 F [20th]		X		2540 F–97
2550 B [20th] (listed as "2550" for drinking water regulations)	X	X	X	2550 B–00 (2550–00)
3111 B [19th]	X	X	X	3111 B–99
3111 C [19th]		X		3111 C–99
3111 D [19th]		X		3111 D–99
3112 B [19th]		X	X	3112 B–99
3113 B [19th]		X	X	3113 B–99
3114 B [19th]	X	X	X	3114 B–97
3120 B [20th]	X	X	X	3120 B–99
3500–Al B [20th]		X		3500–Al B–01
3500–As B [20th]	X	X		3500–As B–97
3500–Ca B [20th]		X	X	3500–Ca B–97
3500–Cr B [20th]	X	X		3500–Cr B–01
3500–Cu B [20th]	X	X		3500–Cu B–99
3500–Cu C [20th]	X	X		
3500–Fe B [20th]	X	X		3500–Fe B–97
3500–Pb B [20th]		X		3500–Pb B–97
3500–Mg B [20th]			X	3500–Mg B–97
3500–Mn B [20th]		X	X	3500–Mn B–99
3500–K B [20th]		X		3500–K B–99
3500–Na B [20th]	X	X		3500–Na B–97
3500–V B [20th]		X		3500–V B–97
3500–Zn B [20th]		X		3500Zn B–97
4110 B [20th] (proposed for NPDES in this rule)		X	X	4110 B–00
4500–B B [20th]		X		4500–B B–00
4500–CN–D [20th]		X		4500–CN D–99
4500–CN–E [20th]		X	X	4500–CN E–99
4500–CN–F [20th] (proposed for NPDES in this rule)		X	X	4500–CN F
4500–CN–G [20th]		X	X	4500–CN G–99
4500–Cl B [20th]		X		4500–Cl B–00
4500–Cl C [20th]		X		4500–Cl C–00
4500–Cl D [20th]		X	X	4500–Cl D–00
4500–Cl E [20th] (proposed for NPDES in this rule)		X	X	4500–Cl E–00
4500–Cl F [20th]		X	X	4500–Cl F–00
4500–Cl G [20th]		X	X	4500–Cl G–00
4500–Cl H [20th]			X	4500–Cl H–00
4500–Cl I [20th]			X	4500–Cl I–00
4500–Cl–B [20th]		X		4500–Cl–B–97
4500–Cl–C [20th]		X	X	4500–Cl–C–97

TABLE III.—PROPOSED STANDARD METHODS—Continued

Revised from standard methods [most recent approved version]	revised	proposed for wastewater	proposed for drinking water	New number
4500–Cl-E [20th]		X		4500–Cl-E–97
4500–ClO_2 C [20th]			X	4500–ClO C–00
4500–ClO_2 E [20th]		X	X	4500–ClO2
4500-F-B [20th]		X	X	4500-F-B–97
4500-F-C [20th]		X	X	4500-F-C–97
4500-F-D [20th]		X	X	4500-F-D–97
4500-F-E [20th]		X		4500-F-E–97
4500-H+ B [20th]	X	X	X	4500-H+ B–00
4500-NH_3 B [20th]		X		4500-NH_3 B–97
4500-NH_3 C [20th]		X		4500-NH_2-C–97
4500-NH_3 D [20th]		X		4500-NH_3 D–97
4500-NH_3 E [20th]		X		4500–NH_3 E–97
4500-NH_3 G [20th]	X	X		4500-NH_3 G–97
4500-NO_2 B [20th]		X	X	4500-NO_2 B–00
4500-NO_3-D [20th]		X		4500-NO_3- D–00
4500-NO_3-E [20th]	X		X	4500-NO_3- E–00
4500-NO_3-F [20th]		X	X	4500-NO_3 F–00
4500-NO_3-H [20th]		X		4500-NO_3- H–00
4500-N_{org} B [20th]		X		4500-N_{org} B–97
4500-N_{org} C [20th]		X		4500-N_{org} C–97
4500-O C [20th]		X		4500-O C–01
4500-O G [20th]		X		4500-O G–01
4500-O_3 B [19th] (4500-O_3 B [20th] is proposed in this rule)	X		X	4500-O_3 B–97
4500-SiO_2 C [20th] is proposed in this rule)	X		X	4500-SiO_2> C-97
4500-SiO_2 C [20th]	X	X		4500-SiO_2 C–97
4500-SiO_2 D [20th]			X	4500-SiO_2 D–97
4500-SiO_2 E [20th]			X	4500-SiO_2 E–97
4500-SiO_2 F [20th]			X	4500-SiO_2 F–97
4500-S^{2-} D [20th]		X		4500-S^{2-} D–00
4500-S^2 F [20th]		X		4500-S^{2-} F–00
4500-S^{2-} G [20th]		X		4500-S^{2-} G–00
4500-SO_33^{2-} B [20th]		X		4500-SO_33^{2-} B–00
5210 B [20th]	X	X		5210 B–01
5220 C [20th]		X		5220 C–97
5220 D [20th]		X		5220 D–97
5310 B [20th]		X		5310 B–00
5310 C [20th]		X		5310 C–00
5310 D [20th]		X		5310 D–00
5520 B [20th]	X	X		5520 B–01
5540 C [20th]	X	X	X	5540 C–00
6200 B [20th]	X	X		6200 B–97
6200 C [20th]		X		6200 C–97
6410 B [20th]		X		6410 B–00
6420 B [20th]	X	X		6420 B–00
7110 B [20th]	X	X	X	7110 B–00
7110 C [20th]			X	7110 C–00
7120 [20th]	X		X	7120–97
7500-Cs B [20th]			X	7500-Cs B–02
7500-I B [20th]			X	7500-I B–00
7500-I C [20th]			X	7500-I C–00
7500-I D [20th]			X	7500-I D–00
7500-Ra B [20th]		X		7500-Ra B–01
7500-Ra C [20th]		X	X	7500-Ra C–01
7500-Ra D [20th]			X	7500-Ra D–01
7500-Sr B			X	7500-Sr B–01
7500–^{3}H B [20th]	X		X	7500–^{3}H B–00
7500-U B [20th]			X	7500-U B–00
7500-U C [20th]			X	7500-U C–00
9215 B [20th]			X	9215 B–00
9221 A [20th]			X	9221 A–99
9221 B [20th]		X	X	9221 B–99
9221 C [20th]	X	X	X	9221 C–99
9221 D [20th]		X	X	9221 D–99
9221 E [20th]		X	X	9221 E–99
9222 A [20th]	X		X	9222A–97
9222 B [20th]	X	X		9222 B–97
9222 C [20th]			X	9222 C–97
9222 D [20th]		X	X	9222 D–97
9223 [20th]			X	9223–97
9230 B [20th]	X	X		9230 B–93

TABLE III.—PROPOSED STANDARD METHODS—Continued

Revised from standard methods [most recent approved version]	revised	proposed for wastewater	proposed for drinking water	New number
9230 C [20th]		X		9230 C–93

d. AOAC International

This rule proposes to update references to approved methods from AOAC International to include the versions of those methods published in the 16th edition of Official Methods of Analysis of AOAC International, 1995, for use in NPDES compliance monitoring. Approved AOAC methods from earlier editions of Official Methods of Analysis of AOAC International will continue to be applicable for compliance monitoring.

7. Method Modifications, Analytical Requirements, and Reporting Requirements

a. Replacement of Mercury Catalyst in TKN Methods

Mercuric sulfate is used as a catalyst in some approved methods for determining total Kjeldahl nitrogen (TKN). Mercuric sulfate is a toxic hazard and the presence of mercury in used reagents increases waste disposal costs. For these reasons, EPA proposes to explicitly require the substitution of copper sulfate for mercuric sulfate in all TKN methods. Copper sulfate exhibits significantly less toxicity than mercuric sulfate. The European community has already eliminated mercuric chloride from their total nitrogen methods in favor of less toxic catalysts, and some approved methods (*e.g.*, 19th and 20th Ed. Standard Methods for TKN) have even included copper sulfate explicitly as a catalyst (evidencing the technical acceptability of the substitution).

b. Approval of Additional Standards for Turbidity

EPA is proposing to formally approve the use of styrene divinylbenzene beads (AMCO–AEPA–1 Standard) and Hach StablCal as alternatives to the presently approved formazin standard. Formazin is prepared using hydrazine sulfate, a known carcinogen. The approval of AMCO–AEPA–1 and Hach StablCal would eliminate the need to handle hydrazine sulfate, and would, therefore, improve laboratory safety. The NPDES ATP program has recognized AMCO–AEPA–1 Standard (listed in EPA Method 180.1 as an approved primary standard for drinking water) and Hach StablCal as acceptable alternatives to formazin for a number of years. Inclusion at 40 CFR 136 would formalize this acceptance nationwide.

c. Use of Capillary Columns

EPA proposes to allow the use of capillary (open tubular) GC columns with EPA Methods 601–613, 624, 625, and 1624B provided that all quality control (QC) tests in these methods are performed and all QC acceptance criteria are met. This action would codify EPA's general practice of allowing capillary GC columns in placed of the packed columns described in the above methods. However, when employing capillary columns, the retention times of analytes can change substantially. Therefore, EPA proposes to require that analysts prepare analyte retention time tables based on the capillary columns that they used.

d. Analytical Requirements for Multi-analyte Methods (Target Analytes)

EPA proposes to clarify that analysts need only meet method performance requirements for target analytes (those analytes being measured for NPDES reporting). Some analysts interpreted performance requirements in methods to mean that requirements for every analyte in a method must be met. However, attempting to meet the performance requirements of non-target analytes can add substantial cost (due to extra analyses, extra preparation of standards, etc.) with little or no benefit to the quality of target analyte data.

e. Requirements for Approval of Method Modifications

EPA also proposes codification of method flexibility provisions and analytical requirements at 40 CFR 136.6. This new part describes potentially allowable method modifications and requirements that analysts would need to meet to use these modifications without prior EPA approval. The part would also clarify the analytical requirements for multi-analyte methods, and codify EPA's allowance of capillary columns with gas chromatography methods that currently specify the use of packed columns.

In order to evaluate method modifications, the analyst would be required to assess performance by analyzing test samples and comparing the results with performance benchmarks for the unmodified method. The quality control (QC) tests and QC acceptance criteria provided in many of the approved methods generally would serve this purpose. At a minimum, the analyst would need to evaluate performance in wastewater matrices and include both initial (start-up) and ongoing procedures to evaluate performance. If the tests and criteria in a method meet these minimum standards, they would be used to evaluate a modification. If the tests and criteria in a method do not meet these minimum standards, analysts would use QC tests and acceptance criteria specified in *Protocol for EPA Approval of Alternate Test Procedures for Organic and Inorganic Analytes in Wastewater and Drinking Water* (EPA–821–B–98–002; March 1999) (ATP Protocol). The applicable tests, which are common to the analytical community (*e.g.*, calibration verification tests, matrix spike-matrix spike duplicate tests), are described in Section 3.5 of the ATP Protocol. QC acceptance criteria for these tests are found in Table IF of the ATP Protocol.

When applying the ATP protocol, analysts would need to use the tests and criteria in initial validation and ongoing verification. The ongoing verification would include assessment of performance of the modified method on the sample matrix (*e.g.*, analysis of a matrix spike/matrix spike duplicate pair for every twenty samples of a discharge analyzed), and analysis of an ongoing precision and recovery sample and a method blank with each batch of 20 or fewer samples.

The actions proposed would codify past EPA policy that has been specified in certain approved methods and guidance. For example, with regard to allowable method modifications, the proposed allowance of an increase of sample volumes up to 25 mL for purge-and-trap methods, recognizes the existing flexibility in EPA Method 524.2 (and places reasonable limits on sample volumes based on the demonstrated performance of that method) and the use of salt in sample extraction recognizes recommendations from EPA's *Guidance on Evaluation, Resolution, and Documentation of Analytical Problems Associated with Compliance Monitoring.* Increasing the sample volume has been used as one means to lower the detection limits of some

purge-and-trap procedures and EPA recognizes that the purging efficiency of some of the analytes of interest may be adversely affected by the increased sample volume and may lead to decreased precision and recovery for those analytes. When using an increased sample volume, EPA strongly recommends the use of one or more surrogate analytes that are chemically similar to the analytes of interest. Use of these surrogates should assist in the identification of analytical errors that may result from the increased sample volume. EPA further recognizes that increasing the sample volume may necessitate changes to the configuration of the purge-and-trap device in order to provide a water column height of at least 5 cm in the purge vessel. EPA requests comments and data regarding whether the existing quality control procedures and the use of calibration procedures in which the standards that are also purged are sufficient to substantiate the performance of these methods when the sample volume is increased beyond 5 mL. EPA also requests comment as to whether the standards for evaluating modifications are adequately defined, and whether the potentially allowable modifications should be expanded, reduced, or changed.

Finally, EPA requests comment on the reference to the ATP protocol in 40 CFR 136.6. The proposed 40 CFR 136.6 only references the ATP protocol guidance to establish baseline QC tests and acceptance criteria for modifications made under 40 CFR 136.6 where such criteria are not available in methods. The reference to the ATP protocol would not, however, bind EPA to apply the ATP protocol as written to ATPs processed under 40 CFR 136.4 and 136.5. EPA may modify the ATP protocol guidance or apply different requirements for validation of ATPs under 40 CFR 136.4 and 136.5, as appropriate, without notice and opportunity for comment.

f. Clarification of Reporting Requirements

EPA proposes to add section 136.7 to clarify that a quality control (QC) failure does not grant relief of timely reporting of results to a regulated entity, and that results be reported to the level specified in the method or required in the permit, whichever is lower. EPA emphasizes that this clarification does not create any new or additional reporting requirements. In fact, the methods in this part do not create reporting requirements at all. Reporting requirements are created when a regulatory or control authority requires reporting of results upon use of a method at this part.

8. Withdrawal of Methods

a. Previous Versions of Updated Methods and Outdated Methods

EPA proposes to remove some older versions of EPA methods and replace them with updated versions, (see Table I). The updated versions include quality control procedures that should help improve data reliability. In addition, EPA is proposing deletion of most methods from EPA's Methods for the Chemical Analysis of Water and Wastes. In many cases, these methods were replaced with newer versions of the EPA methods, and in all cases approved alternatives (either published by EPA or VCSBs like ASTM and Standard Methods) are available.

b. Liquid-Liquid Extraction Methods for Dichlorobenzenes

EPA proposes to delete liquid-liquid extraction (LLE) methods, including EPA Methods 612 and 625 and Standard Methods Method 6410 B, as approved procedures for 1,2–dichlorobenzene, 1,3–dichlorobenzene, and 1,4-dichlorobenzene (originally included in the 10–18 proposal). While these compounds can be determined by these LLE methods, significant losses of these volatiles can occur using the prescribed sample collection procedures in the LLE methods, resulting in relatively low recovery of these compounds. These compounds are more accurately and precisely analyzed by EPA Method 624 or 1625B (an isotope-dilution method that compensates for evaporation losses).

c. CFC-based Oil and Grease Methods

EPA proposes to withdraw approval for all oil and grease methods that use chlorofluorocarbon-113 (CFC–113; Freon–113) as an extraction solvent because CFC–113 is a Class I ozone-depleting substance (ODS). On May 14, 1999 (64 FR 26315), EPA approved EPA Method 1664A as a replacement for Freon-based oil and grease methods to reduce dependency on CFC–113 (Method 1664A uses n-hexane as an extraction solvent). On March 13, 2001 (66 FR 14759), EPA published rules that would eliminate the global laboratory use exemption for ODSs produced or imported after December 31, 2001, for testing oil and grease and petroleum hydrocarbons in water; on November 1, 2001 (66 FR 55145), EPA proposed to codify this elimination. To further reduce reliance on ODSs, EPA proposes to withdraw EPA Method 413.1 and USGS Method I–4540–85 from use, and to specify that only n-hexane extraction solvent (as used in EPA Method 1664A) is approved with the remaining methods. The withdrawal and replacement would take effect on December 31, 2005, consistent with the November 1, 2001, proposal. This would allow those remaining dischargers and permittees who have not switched to n-hexane methods (*e.g.*, 1664A) time to become completely familiar with the alternative n-hexane methods.

B. Sample Collection, Preservation, and Holding Time Requirements for NPDES Compliance Monitoring and Pretreatment

1. Updates to Sampling Requirements at 40 CFR Parts 122, 136, and 403

This rule proposes to correct inconsistencies in sampling requirements at 40 CFR parts 122, 136, and 403. These inconsistencies were inadvertently created by past rulemakings. In addition to correcting the current language, references back to 40 CFR part 136 would be added to Sections 122 and 403 because the analytical methods and sampling requirements promulgated at 40 CFR part 136 often give detailed and up-to-date instructions on sample collection. Also recognizing that a single section of the CFR is the primary source for sample collection requirements will prevent future inconsistencies.

2. Revisions to 40 CFR Part 136, Table II

40 CFR part 136, Table II specifies sampling, preservation, and holding time requirements. This proposal would make a number of additions and modifications to these tables to reduce confusion and reflect current understanding of sample preservation requirements. The proposed changes are:

Changes to General Requirements

EPA proposes to clarify the abbreviation "do." (used extensively in Table II), and to change the general sample preservation temperature from 4 °C to ≤6.00 °C (unfrozen).

"Do." means "ditto"; *i.e.*, that the entry immediately above the "do." applies. This definition has always been the meaning of "do.," but EPA would add language to Table II to clarify this point.

EPA has received requests to make temperature requirements consistent with those of the National Environmental Laboratory Accreditation Committee (NELAC). NELAC has adopted a standard of 4 ± 2 °C for sample preservation temperature and has asked

EPA to adopt this definition. EPA has proposed a ≤6.00 °C (unfrozen) sample perservation temperature because maintenance of a 4 ±2 °C temperature requires an active refrigeration system (which will raise sample shipping costs), and because EPA is not aware of any evidence to suggest that allowing refrigeration below 2 °C (the lower limit of NELAC standard) will adversely effect samples.

Because many approved methods list preservation temperatures, adopting the ≤6.00 °C (unfrozen) sample preservation temperature would cause inconsistencies between Table II and methods that list a 4 °C sample preservation temperature. Therefore, EPA proposes to add a note to Table II specifying that preservation temperatures in Table II supersede all temperature requirements listed in approved methods or other sources.

Requirements for Inorganic Parameters

EPA is proposing changes to parameter 10 (boron), 18 (hexavalent chromium), and 23–24 (cyanides), 25 (fluoride), 35 (mercury), and metals. Changes to boron and fluoride are proposed because of proposed changes in footnote 1 of Table II described later in this section, and make no substantive changes. For boron, EPA proposes to remove "PTFE" because this information duplicates the allowed use of fluoropolymer in proposed footnote 1. Similarly, the entry for fluoride will explicitly limit sample collection to polyethylene containers.

For cyanides, EPA proposes to re-draft listings in Table II to include total cyanide, cyanide amenable to chlorination, and available cyanide (to be consistent with 40 CFR part 136, Table IB). This, too, does not pose a substantive change.

The other proposed changes are substantive. For hexavalent chromium, EPA proposes to increase the holding time for chromium 6 (CrVI) from 24 hr to 28 days when the sample is preserved to pH 9.3 to 9.7 using sodium hydroxide and the ammonium sulfate buffer solution specified in EPA Method 218.6. (Method 218.6 is also being proposed today.) EPA has received a presentation and spreadsheet from Montgomery-Watson Laboratories and East Bay MUD supporting the increase in holding time and has placed the presentation and spreadsheet in the Docket for today's proposal. EPA solicits further data supporting, refuting, or causing modification of the proposed increase in holding time.

For mercury, requirements would be divided by methodology (as each requires different sample handling and preservation techniques) and sample type, and tissue samples frozen to < − 10 °C could be held for 10 years under certain conditions. Finally, for metals (elements) other than boron, hexavalent chromium, and mercury, EPA proposes to allow sample preservation (in the original sample) with nitric acid 24 hours prior to analysis. In other words, acid preservation in the field for elements would not be required except for boron, hexavalent chromium, and mercury. This proposal reflects current EPA policy, prevents the shipment of dangerous acidic materials, and is supported by data showing that metals adsorbed to a sample container will resolubilize with 24 hours of acidification.

Requirements for Organics in Table IC

EPA proposes to split the entry for field preservation into separate entries for tissue and for solid and mixed phase samples, allowing a seven-day holding time for mixed phase samples, a 24–hour holding time for tissues in the field, and one-year holding time for all samples frozen to < − 10 °C. These changes reflect that tissue samples must be frozen within 24 hours to maintain sample integrity.

Footnotes In Table II

This rule proposes modifications to footnotes 1, 2, 4, 5, 6, 7, 11, and 13 to 40 CFR 136.3, Table II. By editing footnote 1, EPA would allow fluoropolymer sample containers for all tests that presently allow use of polyethylene, except fluoride (for which this container is not appropriate). This change reflects the common use of fluoropolymers (like PTFE) in the laboratory, and their value in making unreactive sample containers.

EPA proposes to revise footnote 2 to clarify current sampling requirements. Similarly, EPA proposes to revise footnote 4 to clarify that the start of holding times. The holding time for a grab sample starts at the time of sample collection. The holding time for a composite sample starts at the time the last grab sample component is collected.

EPA proposes to revise footnote 4 to clarify that for bacteriolgical samples, the holding time of six hours may followed by two hours to analyze the sample. EPA has received questions about whether the holding time of six hours includes sample analysis time or not.

EPA proposes to update footnotes 5 and 6 as part of revisions to the preservation requirements at 40 CFR 136.3, Table II to reflect the options included in certain proposed and currently approved methods. EPA has received complaints about current sample preservation techniques (such as the addition of ascorbic acid as an anti-chlorinating agent) and believes the procedures that EPA proposes would prove more successful at providing high quality data. By citing all the recommended preservation options in approved methods, EPA expects analysts to chose those that provide the most accurate results.

EPA also is considering alternative preservation and interference removal procedures for cyanide samples. In particular, for samples containing sulfides, EPA is proposing to allow use of bismuth (as opposed to cadmium or lead) or lowering the sample pH and stripping out hydrogen sulfide with air prior to addition of sodium hydroxide. Lead and cadmium may inadvertently promote the precipitation of metal-cyanide complexes, leading to the under-reporting of total cyanide. EPA requests comment on all the preservation procedures proposed and under consideration, as well as alternatives which could improve total cyanide recoveries. EPA further requests that pertinent data and references to relevant articles be included with such comments.

Footnote 7 would be revised to clarify that samples analyzed for dissolved metals should be filtered within 15 minutes of collection (currently the footnotes specifies that samples should be filtered "immediately"). Footnote 11 would be revised to reflect the proposed change in sample preservation temperature to ≤6.00 °C, described above. Also, footnote 13 would be revised to allow the storage of sample extracts for 30 days if stored at <0 °C (based on results of studies with EPA Method 553).

C. Editorial Revisions and Clarifications to 40 CFR Parts 122, 136, 455, and 465

This proposal would make many other minor changes to 40 CFR part 136. These changes are intended to clarify existing regulations, or increase method flexibility.

40 CFR Part 122

EPA is considering two options to clarify regulations regarding the use of analytical methods specific to Title 40 of the CFR, Chapter I, Subchapters N and O (effluent guidelines and sewage sludge, respectively). Currently, regulations at 40 CFR part 122 (that implement the general provisions of the NPDES regulations), state that NPDES monitoring must be conducted with methods specified at 40 CFR part 136. As a result, 40 CFR part 122 may

confuse the reading of effluent guidelines regulations at 40 CFR parts 400–471 (Chapter I, Subchapter N), and with sewage sludge regulations at 40 CFR part 501–503 (Chapter I, Subchapter O), because methods are included in those regulations that are not specified at 40 CFR part 136. For example, the pulp, paper, and paperboard point source category (40 CFR part 430) provides two methods specifically for use in that category at 40 CFR part 430, Appendix A (EPA Methods 1650 and 1653). The intent of including these methods at 40 CFR part 430 was that permit writers would specify their use in permits covering the pulp, paper and paperboard effluent. However, the language at 40 CFR part 122 could be read to defeat this intent.

To harmonize the existing regulations, EPA is considering two options. Under Option 1, EPA may modify language at 40 CFR part 122 to explicitly allow use of methods at 40 CFR part 136 or that are specifically included in regulations that cover the discharge. For example, the following language in [brackets] would be added to 40 CFR 122.21(g)(7)(i):

(7) *Effluent characteristics.* (i) Information on the discharge of pollutants specified in this paragraph (g)(7) (except information on storm water discharges which is to be provided as specified in § 122.26). When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under part 136 of this chapter [unless a method is specified for an industry-specific waste stream at 40 CFR subchapters N or O]. When no analytical method is approved [under part 136 or specified under subchapters N or O,] the applicant may use any suitable method but must provide a description of the method.

Similar changes would be made to 40 CFR 122.1(a)(4), 122.41(j)(4), 122.41(l)(4)(ii), and 122.44(i)(1)(iv), as described in the regulatory text of this rule.

Under Option 2, EPA would add a table or tables to 40 CFR part 136 listing methods that are included in other parts of the CFR and the regulations to which they are applicable. This approach has been taken in the past with certain industry-specific effluent guidelines. For example, 40 CFR part 136, Table IF specifies methods that may be used at 40 CFR part 439 (pharmaceutical manufacturing point source category), and today's rule proposes the addition of Table IG to 40 CFR 136 to list methods for use at 40 CFR 455 (pesticide chemical point source category). EPA solicits comments on both approaches, or other options that may be preferable for resolving the current confusion.

40 CFR 136.3, 136.4 and 136.5

EPA proposes to revise all occurrences of "Director of the Environmental Monitoring Systems Laboratory" and "Director, Analytical Methods Staff" to "Alternate Test Procedure Program Coordinator, Washington, DC" to reflect EPA's current ATP Program management. In addition, addresses for submission of ATPs will be updated to reflect the current location of the Alternate Test Procedure Program Coordinator.

40 CFR Part 136, Table IA

EPA proposes to delete footnote 4, which provides reference information for Standard Methods. Footnote 4 is not needed because the reference is recognized by the laboratory and regulated community, and reference information is provided at 40 CFR 136.3(b).

40 CFR Part 136, Table IB

EPA proposes minor edits to footnotes 1, 4, and 6. EPA proposes to add an NTIS order number to footnote 1, revise metals digestion requirements to footnote 4 (in light of changes previously in this Section), and to remove the word "company" from footnote 6 (because entities that conduct testing are not always companies). Also, EPA proposes to revise the format of references to footnote 10 to be consistent with other sections of the CFR.

40 CFR Part 136, Table IC and ID

EPA proposes to remove the "Note" regarding warning limits "interim" status from footnote 7 to both tables, because these limits have been in use for more than 15 years without difficulties (beyond those always encountered when first starting to use a method).

40 CFR Part 136, Table IE

EPA proposes to add an NTIS reference number to footnote 1.

40 CFR Part 136, Table IG and 40 CFR 455

EPA proposes to move Table 7 from 40 CFR part 455, to 40 CFR part 136, Table IG. EPA proposes this change to further consolidate lists of analytical methods in a single section of the CFR.

Addition of 40 CFR 136.6

EPA proposes to add the additional method flexibility and analytical requirements discussed in Section III.A.7.

Addition of 40 CFR 136.7

EPA proposes to add the clarified reporting requirements discussed in Section III.A.7.

Changes to 40 CFR Part 465

This rule proposes to remove the exemption for Freon-based oil and grease methods (described *supra*). The Coil Coating Point Source Category at 465.03 contains a method for determination of petroleum hydrocarbons using a freon extraction method. EPA proposes to remove this method and to replace it with a reference to EPA Method 1664A for determination of non-polar materials (NPM), which is generally equivalent to total petroleum hydrocarbons. EPA has received many requests to allow the use of Method 1664A for this industrial category. This change will further the goal of reducing the use of ozone depleting substances.

IV. Summary of Proposed Revisions to Drinking Water Regulations

A. Vendor Developed Methods

1. Anions by CIE–UV

Waters Corporation CIE/UV Method (D6508, Rev. 2), described in Section III.A.1.a above, is a new method that employs capillary ion electrophoresis to determine common anions in wastewater and drinking water. This method is being proposed today for use in NPDWR and NSDWR compliance monitoring for determination of the common anions.

2. Free Chlorine by Color Comparison Test Strip

This rule proposes to allow States the option of approving ITS free chlorine test strips as a test kit for the measurement of free chlorine. The ITS test strip is configured with a "color pad" attached to a plastic holder. The color pad contains 3,3,5',5'-tetramethylbenzidine (TMB) which reacts with chlorine to produce a color change that is proportional to the amount of free chlorine in the sample. The chlorine concentration is quantified by comparison of this color with an ITS color chart.

The use of ITS free chlorine test strips has been discussed in literature and has been validated in drinking water using two interlaboratory validation studies. The studies were performed to characterize the false negative and false positive rates of the strips, the precision and recovery using the strips, the sensitivity of the strips, and the variability of test strips between lots. To eliminate potential analyst bias, all studies were double-blind and random.

The false positive and false negative rates were 0–1%. Method precision and recovery was characterized in multiple matrices at multiple concentrations. For example, free chlorine recovery was approximately 100%, and relative standard deviation (RSD) was generally below 20% for analysis of drinking water samples fortified with 0.1 ppm of free chlorine. Method sensitivity was demonstrated to be sufficient for monitoring chlorination levels at 0.1 ppm or above; chlorination levels required by NPDWRs is 0.2 ppm. Finally, results did not appear to vary across different lots of ITS strips.

The use of the test strips is described in Method D99–003, "Free Chlorine Species" (HOCl- and OCl-) by Test Strip" [Revision 3.0, November 21, 2003]. A copy of Method D99–003 and the method validation study report are in the docket supporting this rule. In addition, copies of Method D99–003 and test strips are available from Industrial Test Systems, Inc., 1875 Langston St., Rock Hill, SC 29730.

3. Available Cyanide by Ligand Exchange—FIA

This rule proposes approval of two similar methods for the determination of available cyanide: Method OIA–1677, DW and ASTM D6888–03. Studies have shown that available cyanide is equivalent to cyanide amenable to chlorination (CATC), and, therefore, that available cyanide methods can be used in place of approved procedures for the determination of CATC. Under NPDWR regulations, CATC is generally measured when the total cyanide level provides a value higher than the cyanide MCL (See 57 FR 31800; July 17, 1992).

EPA–821–R–99–013, August 1999 Method OIA–1677, DW "Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry," January 2004 is technically equivalent to Method OIA–1677, which is currently approved for determination of available cyanide in the NPDES program (64 FR 73414; December 30, 1999). Method OIA–1677, DW only differs from OIA–1677 in having (a) updated contact information, and (b) less method modification flexibility (references to performance-based modifications have been removed). Therefore the validation data on OIA–1677 is applicable to OIA–1677, DW.

Method OIA–1677 was validated by an intralaboratory validation study and a nine-laboratory validation study. The intralaboratory study was performed to establish (1) the ability of OIA–1677 to detect and quantify 11 specific metallocyanide complexes as compared to CATC and Weak Acid Dissociable (WAD) cyanide methods, (2) the ability of OIA–1677 to identify and overcome analytical interferences, and (3) compare the precision and recovery of OIA–1677 to CATC and WAD cyanide methods. These studies showed that OIA–1677 could (1) recover up to 100% of the cyanide compounds that were detected by the CATC and WAD cyanide methods, (2) overcome most analytical interferences, and (3) provide comparable or better precision and recovery than CATC and WAD cyanide methods.

The interlaboratory study was conducted to (1) confirm the performance of OIA–1677 across multiple laboratories, (2) assess interlaboratory and matrix variability, and (3) develop QC acceptance criteria. Nine laboratories participated in the study, each analyzing an identical set of six field samples (effluents) using OIA–1677. Along with these effluent analyses, laboratories performed all the required QC analyses in OIA–1677 and an MDL study. The relative standard deviation (RSD) of results across all laboratories and all samples was 12%. The mean recoveries across all effluents tested was 96%.

ASTM Method D6888–03, which also is being proposed for use in NPDES compliance monitoring in this rule, uses a similar technology to Method OIA–1677, and is described above.

While these methods generally provide dependable results, sulfide at levels below those detected with the lead acetate paper may produce false positive signals on the amperometric detection systems used in D6888–03 and OIA–1677 (see Zheng *et al.* "Evaluation and Testing of Analytical Methods for Cyanide Species in Municipal and Industrial and Contaminated Waters," Environ. Sci. Technol. 2003, 37, 107–115). Lead acetate paper is generally recommended means for screening for the presence of sulfide interferences in cyanide methods, but the paper will not detect sulfides below approximately 5 ppm. For this reason, analysts suspecting a sulfide interference should test their sample with a more sensitive sulfide procedure and treat the sample accordingly.

4. Radium-226 and 228 by Gamma Spectrometry

The Environmental Resources Center (ERC) at the Georgia Institute of Technology has developed a method, "The Determination of Radium-226 and Radium-228 in Drinking Water by Gamma-ray Spectrometry Using HPGE or Ge(Li) Detectors." The method simultaneously determines the concentration of both Radium-226 and Radium-228 from a single sample aliquot. This method can significantly reduce the isolation and purification steps currently required in EPA-approved sequential methods for the measurement of these radioisotopes, potentially reducing both the labor and waste disposal costs by greater than 50 percent.

A sample has its radium isotope content preconcentrated using a sulfate coprecipitation. It is then placed into a sample container appropriate for the laboratory's gamma detection system. The prepared sample is then measured in a reproducible counting geometry for a suitable amount of time so that the collected gamma spectra demonstrates the required sensitivity, defined as a Minimum Detectable Concentration (MDC), of 1 picoCurie per liter (pCi/L) for both of the regulated contaminant radioisotopes.

Method performance was characterized using a 3-laboratory study to test the method's recovery, precision, sensitivity, and ruggedness using diverse matrices found in finished drinking waters. The results of these studies demonstrate this method has the required sensitivity, and can be expected to provide results that are at least equivalent to, or have a higher degree of recovery and precision than the current EPA-approved methods for producing these measurements.

ERC's method and a copy of the method validation study report are in the docket supporting this rule. In addition, copies of ERC's method are available from The Environmental Resources Center, Georgia Institute of Technology, 620 Cherry Street, Atlanta, GA 30332–0335, USA, Phone: 404–894–3776.

B. EPA Method for Chlorine Dioxide by Colorimetry

EPA is proposing to add a new method to 40 CFR 141.74 for the measurement of chlorine dioxide residuals. EPA Method 327.0 (USEPA 2003), which has been proposed for addition to 40 CFR 141.131 in a previous rulemaking (68 FR 49548, August 18, 2003) is an enzymatic / spectrophotometric method in which a total chlorine dioxide plus chlorite concentration is determined in an unsparged sample and the chlorite concentration is determined in a sparged sample. The chlorine dioxide concentration is then calculated by subtracting the chlorite concentration from the total.

EPA proposes to approve EPA Method 327.0 as an additional method for CT

determinations when chlorine dioxide is the disinfectant residual in use. It would provide water systems with additional flexibility in monitoring the application of chlorine dioxide. EPA believes that many water plant operators will prefer the new method over the currently approved methods due to its ease of use.

The pH of the samples (sparged and unsparged) and blank are adjusted to 6.0 with a citric acid/glycine buffer. The chromophore Lissamine Green B (LGB) and the enzyme horseradish peroxidase are added. The enzyme reacts with the chlorite in the sample to form chlorine dioxide which then reacts with the chromophore LGB to reduce the absorbance of the sample at 633 nm. The absorbance of the samples and blank are determined spectrophotometrically. The difference in absorbance between the samples and the blank is proportional to the chlorite and total chlorine dioxide/chlorite concentrations in the samples.

EPA Method 327.0 offers advantages over the currently approved chlorine dioxide methods in that it is not subject to positive interferences from other chlorine species and it is easier to use.

The single laboratory detection limits presented in the method are 0.04–0.16 mg/L for chlorine dioxide. The detection limits are based on the analyses of sets of seven replicates of reagent water that were fortified with low concentrations of chlorine dioxide with and without the presence of chlorite. The standard deviation of the mean concentration for each set of samples was calculated and multiplied by the student's t-value at 99% confidence and n-1 degrees of freedom (3.143 for 7 replicates) to determine the detection limit. The recovery reported in the method for laboratory fortified blanks at concentrations of 0.2–1.0 mg/L is 102–124% for chlorine dioxide with relative standard deviations between 3.6 and 16%. Replicate analyses of drinking water samples from surface and ground water sources fortified at concentrations of approximately 1 and 2 mg/L chlorite and chlorine dioxide showed average recoveries of 91–110% with relative standard deviations of 1–9%.

Method 327.0 (EPA 815–B–03–001) is available from the Office of Ground Water and Drinking Water Technical Support Center, U.S. Environmental Protection Agency, 26 W. Martin Luther King Dr., Cincinnati, OH 45268. The method also may be viewed and downloaded from *http://www.epa.gov/ogwdw/methods/sourcalt.html.*

C. New and Updated VCSB Methods

1. ASTM

This rule proposes to approve a number of updated ASTM methods in NPDWR, and NSDWR compliance monitoring. Previously approved versions of ASTM methods will remain approved. Consult Table II in Section III.A.6.b for a list of proposed methods.

Today's rule also proposes ASTM Method D 6919–03, "Determination of Dissolved Alkali and Alkaline Earth Cations and Ammonium in Water and Wastewater by Ion Chromatography," for use in drinking water compliance monitoring. Consult Section III.A.5.b for more information.

2. Standard Methods

EPA proposes to approve a number of updated Standard Methods in NPDWR, and NSDWR compliance monitoring. Copies of all the proposed methods are in the paper docket for review (they are not included in e-docket due to copyright issues). Copies of Standard Methods are available at a nominal cost from the web site *www.standardmethods.org* or from the Standard Methods Manager, American Water Works Association, 6666 West Quincy Avenue, Denver, CO 80235, 303–347–6175, *sposavec@awwa.org.* Previously approved versions of Standard Methods will remain approved.

Consult Section III.A.6.c for a discussion of EPA's proposed numbering scheme for standard methods, and Table III of that section for a list of proposed methods. While a number of methods contain no changes from previously approved version, some incorporate technical and editorial revisions to improve user-friendliness, update references, and correct errors (methods that were revised from previous versions are indicated in Table III).

D. Withdrawal of Immunoassay Method for Atrazine

A final rule was published by EPA in the **Federal Register** on October 29, 2002 (67 FR 65888), that approved Syngenta Method AG–625 for monitoring atrazine in finished drinking water. EPA proposes to withdraw this method. The proposed withdrawal is motivated by recent reports that show interferences due to chlorine and chlorine dioxide that result in false positive detection and elevated concentrations of atrazine. This has been demonstrated when measuring the concentrations of atrazine in drinking water matrices when compared to values obtained using currently approved methods. EPA seeks comments and information regarding modifications to Syngenta Method AG–625 that would eliminate or substantially mitigate the interferences described above, or regarding conditions under which the method would be suitable for use in drinking water compliance monitoring. If EPA receives such information, the Agency may, in a subsequent notice, propose to modify this method rather than withdraw approval.

V. Request for Comment on Microbiological ATP Protocol

EPA is soliciting comments on "EPA Microbiological Alternate Test Procedure (ATP) Protocol for Drinking Water, Ambient Water, and Wastewater Monitoring Methods—Guidance" (July 2003; EPA–821–B–03–004) (Protocol). The Protocol is a guidance document for evaluating microbiological ATPs, and was referenced in the July 21, 2003, rule promulgating methods for the analysis of microbiological contaminants in ambient waters (July 21, 2003; 68 FR 43272). EPA does not plan to codify the protocol, but is interested in receiving comments that it may consider in future revisions to the protocol.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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 Executive 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 rule is not a "significant regulatory action" under the terms of Executive Order

12866 and is therefore not subject to E.O. 12866 review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* This rule does not impose any information collection, reporting, or recordkeeping requirements. This rule merely proposes new and updated versions of testing procedures, withdraws some older testing procedures, and proposes new sample collection, preservation, and holding time requirements.

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 purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency 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.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. secs. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of this rule on small entities for methods under the Clean Water Act, small entity is defined as: (1) A small business that meets RFA default definitions (based on SBA size standards) found in 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population 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.

For purposes of assessing the impacts of this rule on small entities for methods under the Safe Drinking Water Act, EPA considered small entities to be public water systems serving 10,000 or fewer persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested public comment, consulted with the Small Business Administration, and expressed its intention to use the alternative definition for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition would be applied to this regulation as well.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action proposes new and updated versions of testing procedures, withdraws some older testing procedures, and proposes new sample collection, preservation, and holding time requirements. Generally, these changes will have a positive impact on small entities by increasing method flexibility, thereby allowing entities to reduce costs by choosing more cost effective methods. In some cases, analytical costs may increase slightly due to the additional QC requirements included in the methods that have been proposed to replace older EPA methods. However, most laboratories that analyze samples for EPA compliance monitoring have already instituted QC requirements as part of their laboratory practices. We have determined that a small number of small entities that are still using the CFC–113 based oil and grease methods may need to devote resources to analyst training when they switch to hexane-based methods. However, due to the decreased availability of CFC–113 in the marketplace, we anticipate that the cost differential, if any, will soon favor the use of the hexane-based methods. The phaseout of CFC–113 based methods is required to comply with the Montreal Protocol which prohibits the use of CFC–113 based methods after December 31, 2005.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Anticipating the prohibition of CFC–113 based methods, EPA promulgated hexane-based methods in May 1999. EPA has determined that most laboratories have now switched to hexane-based oil and grease methods, making the analysis costs competitive with the CFC–113 based methods. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. 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 on State, Tribal, and local 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 one 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 of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for the

notification of 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 UMRA) for State, local, or Tribal governments or the private sector. The rule imposes no enforceable duty on any State, local, or Tribal governments or the private sector. In fact, this rule should (on the whole) save money for governments and the private sector by increasing method flexibility, and allowing these entities to reduce monitoring costs by taking advantage of innovations. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Generally, this action will have a positive impact by increasing method flexibility, thereby allowing method users to reduce costs by choosing more cost effective methods. In some cases, analytical costs may increase slightly due to changes in methods, but these increases are neither significant nor unique to small governments. This rule merely proposes new and updated versions of testing procedures, withdraws some older testing procedures, and proposes new sample collection, preservation, and holding time requirements. Thus, today's rule is not subject to the requirements of Section 203 of UMRA.

E. 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 the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule merely proposes new and updated versions of testing procedures, withdraws some older testing procedures, and proposes new sample collection, preservation, and holding time requirements. The costs to State and local governments will be minimal (in fact, governments may see a cost savings), and the rule does not preempt State law. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. 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."

"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 the Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule merely proposes new and updated versions of testing procedures, withdraws some older testing procedures, and proposes new sample collection, preservation, and holding time requirements. The costs to Tribal governments will be minimal (in fact, governments may see a cost savings), and the rule does not preempt State law. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicits comment on this proposed rule from Tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to the Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. Further it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This action proposes new and updated versions of testing procedures, withdraws some older testing procedures, and proposes new sample collection, preservation, and holding time requirements.

H. 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 under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995, (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 *note*), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard 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 proposed rulemaking involves technical standards. As described throughout this document, EPA proposes to use over 150 standards developed by Standard Methods and ASTM International. Paragraphs III.A.3, III.A.5, III.A.6.b, and III.A.6.c specify the methods from these two voluntary consensus standards bodies (including version numbers and dates), provide information on how to obtain copies of these standards, and describe EPA's rationale for employing these standards.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 136

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 141

Chemicals, Environmental protection, Incorporation by reference, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 143

Chemicals, Environmental protection, Incorporation by reference, Indians-lands, Water supply.

40 CFR Part 403

Confidential business information, Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 430

Environmental protection, Paper and paper products industry, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 455

Chemicals, Environmental protection, Packaging and containers, Pesticides and pests, Waste treatment and disposal, Water pollution control.

40 CFR Part 465

Coil coating industry, Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal,Water pollution control.

Dated: March 16, 2004.

Michael O. Leavitt,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations, is proposed to be amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.1 is amended by revising paragraph (a)(4).

§ 122.1 Purpose and Scope.

(a) * * *

(4) The NPDES permit program has separate additional provisions that are used by permit issuing authorities to determine what requirements must be placed in permits if issued. These provisions are located at parts 125, 129, 133, 136 of this chapter and 40 CFR subchapter N and subchapter O of this chapter.

* * * * *

3. Section 122.21 is amended:

a. By revising paragraph (g)(7)(i).

b. In paragraph (h)(4)(i) by revising the fourth and fifth sentences with two revised sentences.

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(g) * * *

(7) *Effluent Characteristics.* (i) Information on the discharge of pollutants specified in this paragraph (g)(7) (except information on storm water discharges which is to be provided as specified in § 122.26). When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under part 136 of this chapter unless a method is specified for an industry-specific waste stream at 40 CFR subchapters N or O. When no analytical method is approved under part 136 or specified under subchapters N or O, the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfall. The requirements in paragraphs (g)(7) (vi) and (vii) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, sulfide, fecal coliform, fecal streptococcus, and volatile organics; unless specified otherwise at 40 CFR part 136. For all other pollutants, a 24-hour composite sample, using a minimum of four (4) grab samples, must be used unless specified otherwise at 40 CFR part 136. Results of analyses of individual grab samples for any parameter may be averaged to form the daily average. Grab samples that are not required to be analyzed immediately (see Table II at 40 CFR part 136) may be composited in the laboratory, provided that container, preservation, and holding time requirements are met (see Table II at 40 CFR part 136) and that sample integrity is not compromised by compositing. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the Director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged.

* * * * *

(h) * * *

(4) * * *

(i) * * * Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, sulfide, fecal coliform, fecal streptococcus, and volatile organics, unless specified otherwise at 40 CFR part 136. For all other pollutants, a 24-hour composite sample, using a minimum of four (4) grab samples, must be used unless specified otherwise at 40 CFR part 136. * * *

* * * * *

4. Section 122.41 is amended by revising paragraphs (j)(4) and (l)(4)(ii).

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).

* * * * *

(j) * * *

(4) Monitoring must be conducted according to test procedures approved under 40 CFR part 136 or unless a method is specified for an industry-

specific waste stream at 40 CFR subchapters N or O.

* * * * *

(l) * * *

(4) * * *

(ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136, or a method specified for an industry-specific waste stream at 40 CFR subchapters N or O, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

* * * * *

5. Section 122.44 is amended by revising paragraph (i)(1)(iv).

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs; see § 123.25).

* * * * *

(i) * * *

(1) * * *

(iv) According to test procedures approved under 40 CFR part 136 for the analyses of pollutants having approved methods under that part, unless a method is specified for an industry-specific waste stream at 40 CFR subchapters N or O; otherwise, monitoring must be conducted according to a test procedure specified in the permit for pollutants with no methods approved under 40 CFR part 136 or specified at 40 CFR subchapters N or O.

* * * * *

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority citation for Part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977.)

2. Section 136.3 is amended:

a. In paragraph (a) by revising the introductory text and Tables IA, IB, IC, ID, and IE.

b. In paragraph (a) by adding Table IG after the notes of Table IF.

c. In paragraph (b) by revising references 6, 10, and 17, and adding references 63 through 69.

d. By revising paragraphs (c), (d), and (e).

The revisions and additions read as follows:

§ 136.3 Identification of test procedures.

(a) Parameters or pollutants, for which methods are approved, are listed together with test procedure descriptions and references in Tables IA, IB, IC, ID, IE, IF, and IG. The full text of the referenced test procedures are incorporated by reference into Tables IA, IB, IC, ID, IE, IF, IG. The incorporation by reference of these documents, as specified in paragraph (b) of this section, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed in paragraph (b) of this section. You can get information about obtaining these documents from the EPA Office of Water Statistics and Analytical Support Branch at 202–566–1000. Documents may be inspected at EPA's Water Docket, EPA West, 1301 Constitution Avenue, NW., Room B135, Washington, DC (Telephone: 202–566–2426); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These test procedures are incorporated as they exist on the day of approval and a notice of any change in these test procedures will be published in the **Federal Register**. The discharge parameter values for which reports are required must be determined by one of the standard analytical test procedures incorporated by reference and described in Tables IA, IB, IC, IE, IF, and IG or by any alternate test procedure which has been approved by the Administrator under the provisions of paragraph (d) of this section and §§ 136.4 and 136.5. Under certain circumstances (paragraph (b) or (c) of this section or 40 CFR 401.13) other test procedures may be more advantageous when such other test procedures have been previously approved by the Regional Administrator of the Region in which the discharge will occur, and providing the Director of the State in which such discharge will occur does not object to the use of such alternate test procedure.

TABLE IA.—LIST OF APPROVED BIOLOGICAL METHODS

Parameter and units	Method [1]	EPA	Standard methods 18th, 19th, 20th Ed.	Standard methods on-line	AOAC, ASTM, USGS	Other
Bacteria:						
1. Coliform (fecal) number per 100 mL.	Most Probable Number (MPN), 5 tube 3 dilution, or.	p. 132 [3]	9221C E	9221C E-99		
	Membrane filter (MF) [2] single step.	p. 124 [3]	9222D	9222D-97	B-0050-85 [5]	
2. Coloform (fecal) in presence of chlorine, number per 100 mL.	MPN, 5 tube, 3 dilution, or.	p. 132 [3]	9221C E	9221C E-99		
	MF, single step [6]	p. 124 [3]	9222D	9222D-97		
3. Coliform (total), number per. 100 mL.	MPN, 5 tube, 3 dilution, or.	p. 114 [3]	9221B	9221B-99		
	MF [2], single step or two step.	p. 108 [3]	9222B	9222B-97	B–0025-85 [5]	
4. Colofirm (total), in presence of chlorine, number per 100 mL.	MPN, 5 tube, 3 dilution	p. 114 [3]	9221B	9221B-99		
	or MF [2] with enrichment	p. 111 [3]	9222 (B+B.5 c)	9222 (B+B.5c)—97		
5. *E. coli*, number per 100 mL [28].	MPN [7, 9, 15], multiple tube		9221B.1/9221F [12, 14]	9221B.1/9221F–99 [12, 14]		

TABLE IA.—LIST OF APPROVED BIOLOGICAL METHODS—Continued

Parameter and units	Method [1]	EPA	Standard methods 18th, 19th, 20th Ed.	Standard methods on-line	AOAC, ASTM, USGS	Other
	multiple tube/multiple well.		9223B [13]	9223B-97 [13]	991.15 [11]	Colert® [13, 17], Colilert-18® [13 16 17]
	MF [2, 6, 7, 8, 9], two step, or.	1103.1 [20]	9222B/9222G [19], 9213D	9222B/9222G-97 [19]	D5392-93 [10]	
	single step	1603 [21], 1604 [22]				mColiBlue-24 [18]
6. Fecal streptococci, number per 100 mL.	MPN, 5 tube, 3 dilution	p. 139 [3]	9230B	9230B-93		
	MF [2], or	p. 136 [3]	9230C	9230C-93	B-0055-85 [5]	
	Plate count	p. 143 [3]				
7. Enterococci, number per 100 mL [28].	MPN [7, 9] multiple tube		9230B	9230B-93		
	multiple tube/multiple well.			D6503-99 [10]	Enterolert® [13, 23]	
	MF [2 6 7 8 9] two step	1106.1 [24]	9230C	9230C-93	5259-92 [10]	
	single step, or Plate count.	1600 [25], p. 143 [3]				
Protozoa:						
8. *Cryptosporidium* [28].	Filtration/IMS/FA	1622 [26], 1623 [27]				
9. *Giardia* [28]	Filtration/IMS/FA	1623 [27]				
Aquatic Toxicity:						
10. Toxicity, acute, fresh water organisms, LC50 percent effluent..	*Ceriodaphnia dubia* acute.	2002.0 [29]				
	Daphnia puplex and *Daphnia magna* acute.	2021.0 [29]				
	Fathead Minnow, *Pimephales promelas*, and Bannerfin shiner, *Cyprinella leedsi*, acute.	2000.0 [29]				
	Rainbow Trout, *Oncorhynchus mykiss*, and brook trout, *Salvelinus fontinalis*, acute.	2019.0 [29]				
	Bioluminescent bacteria, *Vibrio Fischeri*.	Microtox® [32]				
11. Toxicity, acute, estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico, LC50, percent effluent..	Mysid, *Mysidopsis bahia*, acute.	2007.0 [29]				
	Sheepshead Minnow, *Cyprinodon variegatus*, acute.	2004.0 [29]				
	Silverside, *Menidia beryllina, Menidia menidia, and Menidia peninsulae*, actue.	2006.0 [29]				
	Bioluminescent bacteria, *Vibrio Fischeri*.	Microtox® [33]				
12. Toxicity, chronic, fresh water organisms, NOEC or IC25, percent effluent..	Fathead minnow, *Pimephales promelas*, larval survival and growth.	1000.0 [30]				
	Fathead minnow, *Pimephales promelas*, embryo-larval survival and teratogenicity.	1001.0 [30]				

TABLE IA.—LIST OF APPROVED BIOLOGICAL METHODS—Continued

Parameter and units	Method [1]	EPA	Standard methods 18th, 19th, 20th Ed.	Standard methods on-line	AOAC, ASTM, USGS	Other
13. Toxicity, chronic, estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico, NOEC or IC25, percent effluent..	Daphnia, *Ceriodaphnia dubia*, survival and reproduction.	1002.0 [30]				
	Green alga, *Selenastrum capricomutum*, growth.	1003.0 [30]				
	Sheepshead minnow, *Cyprinodon variegatus*, larval survival and growth.	1004.0 [31]				
	Sheepshead minnow, *Cyprinodon variegatus*, embryo-larval survival and teratogenicity.	1005.0 [31]				
	Inland silverside, *Menidia beryllina*, larval survival and growth.	1006.0 [31]				
	Mysid, *Mysidopsis bahia*, survival, growth, and fecundity.	1007.0 [31]				
	Sea urchin, *Arbacia punctulata*, fertilization.	1008.0 [31]				

Notes to Table IA:

[1] The method must be specified when results are reported.

[2] A 0.45-μm membrane filter (MF) or other pore size certified by the manufacturer to fully retain organisms to be cultivated and to be free of extractables which could interfere with their growth.

[3] USEPA. 1978. Microbiological Methods for Monitoring the Environment, Water, and Wastes. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, OH. EPA/600/8–78/017.

[4] [Reserved]

[5] USGS. 1989. U.S. Geological Survey Techniques of Water-Resource Investigations, Book 5, Laboratory Analysis, Chapter A4, Methods for Collection and Analysis of Aquatic Biological and microbiological Samples, U.S. Geological Survey, U.S. Department of Interior, Reston, VA.

[6] Because the MF technique usually yields low and variable recovery from chlorinated wastewaters, the Most Probable Number method will be required to resolve any controversies.

[7] Tests must be conducted to provide organism enumeration (density). Select the appropriate configuration of tubes/filtrations and dilutions/volumes to account for the quality, character, consistency, and anticipated organism density of the water sample.

[8] When the MF method has not be used previously to test ambient waters with high tubidity, large number of noncoliform bacteria, or samples that may contain organisms stressed by chlorine, a parallel test should be conducted with a multiple-tube technique to demonstrate applicability and comparability of results.

[9] To assess the comparability of results obtained with individual methods, it is suggested that side-by-side tests be conducted across seasons of the year with the water samples routinely tested in accordance with the most current *Standard Methods for the Examination of Water and Wastewater* or EPA alternate test procedure (ATP) guidelines.

[10] ASTM. 2000, 1999, 1996. *Annual Book of ASTM Standards—Water and Environmental Technology*. Section 11.02. American Society for Testing and Materials. 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[11] AOAC. 1995. *Official Methods of Analysis of AOAC International*, 16th Edition, Volume I, Chapter 17. Association of Official Analytical Chemists International. 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.

[12] The multiple-tube fermentation test is used in 9221B.1. Lactose broth may be used in lieu of lauryl tryptose broth (LTB), if at least 25 parallel tests are conducted between this broth and LTB using the water samples normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliform using lactose broth is less than 10 percent. No requirement exists to run the completed phase on 10 percent of all total coliform-positive tubes on a seasonal basis.

[13] These tests are collectively known as defined enzyme substrate tests, where, for example, a substrate is used to detect the enzyme β-glucuronidase produced by *E. coli*.

[14] After prior enrichment in a presumptive medium for total coliform using 9221B.1, all presumptive tubes or bottles showing any amount of gas, growth or acidity within 48 h ± 3 h of incubation shall be submitted to 9221F. Commercially available EC–MUG media or EC media supplemented in the laboratory with 50 μg/mL of MUG may be used.

[15] Samples shall be enumerated by the multiple-tube or multiple-well procedure. Using multiple-tube procedures, employ an appropriate tube and dilution configuration of the sample as needed and report the Most Probable Number (MPN). Samples tested with Colilert® may be enumerated with the multiple-well procedures, Quanti-Tray® or Quanti-Tray® 2000, and the MPN calculated from the table provided by the manufacturer.

[16] Colilert-18® is an optimized formulation of the Colilert® for the determination of total coliforms and *E. coli* that provides results within 18 h of incubation at 35°C rather than the 24 h required for the Colilert® test and is recommended for marine water samples.

[17] Descriptions of the Colilert®, Colilert-18®, Quanta-Tray®, and Quanta-Tray®/2000 may be obtained from IDEXX Laboratories, Inc., One IDEXX Drive, West Brook, ME 04092.

[18] A description of the mColiBlue24® test, Total Coliforms and *E. coil*, is available from Hach Company, 100 Dayton Ave., Ames, IA 50010.

[19] Subject total coliform positive samples determined by 9222B or other membrane filter procedure to 9222G using NAN–MUG media.

[20] USEPA. 2002. Method 1103.1: *Escherichia coil (E. coil)* In Water By Membrane Filtration Using membrane-Thermotolerant *Escherichia coli* Agar (mTEC). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–02–02.

[21] USEPA. 2002. Method 1603: *Escherichia coil (E. coil)* In Water By Membrane Filtration Using Modified membrane-Thermotolerant *Escherichia coli* Agar (modified mTEC). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–02–023.

[22] Preparation and use of MIT agar with a standard membrane filter procedure is set forth in the article, Brenner et al. 1993. "New Medium for the Simultaneous Detection of Total Coliform and *Escherichia coli* in Water." *Appl. Environ. Microbial.* 59:3534–3544 and in USEPA. 2002. Method 1604: Total Coliforms and *Escherichia coil (E. coil)* in Water by Membrane Filtration by Using a Simultaneous Detection Technique (MI Medium). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA 821–R–02–024.

[23] A description of the Enterolert® test may be obtained from IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, ME 04092.

[24] USEPA. 2002. Method 1106.1: Enterococci In Water By Membrane Filtration Using membrane-Enterococcus-Esculin Iron Agar (mE–EIA). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–02–021.

[25] USEPA. 2002. Method 1600: Enterococci in Water by Membrane Filtration Using membrane-Enterococcus Indoxyl-β-D-Glucoside Agar (mEI). U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–02–022.

[26] Method 1622 uses filtration, concentration, immunomagnetic separation of oocysts from captured material, immunofluorescence assay to determine concentrations, and confirmation through vital dye staining and differential interference contrast microscopy for the detection of *Cryptosporidium.* USEPA. 2001. Method 1622: *Cryptosporidium* in Water by Filtration/IMS/FA. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–01–026.

[27] Method 1623 uses filtration, concentration, immunomagnetic separation of oocysts and cysts from captured material, immunofluorescence assay to determine concentrations, and confirmation through vital dye staining and differential interference contrast microscopy for the simultaneous detection of *Cryptosporidium* and *Giardia* oocysts and cysts. USEPA. 2001. Method 1623. *Cryptosporidium* and *Giardia* in Water by Filtration/IMS/FA. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–01–025.

[28] Recommended for enumeration of target organism in ambient water only.

[29] USEPA. October 2002. Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms. Fifth Edition. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–02–012.

[30] USEPA. October 2002. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater and Organisms. Fourth Edition. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–02–013.

[31] USEPA. October 2002. Methods for Measuring the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. Third Edition. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–821–R–02–014.

[32] EPA has determined that Microtox® is appropriate for use as a screening level test in a tiered testing system when used in conjunction with current EPA approved WET test methods. Microtox® may not be used by itself to monitor compliance with WET permit limits established for discharges to freshwater.

[33] Prior to using Microtox® to monitor compliance with a WET permit limit, the effluent must be tested using three different species (one test being Microtox®), and Microtox® must be determined to be the method with the most sensitive test species. This requirement strengthens the recommedation from EPA's Technical Support Document (1991 Technical Support Document for Water Quality-based Toxics Control, Second Printing, pg. 16) which states: "To provide sufficient information for making permitting decisions, EPA recommends a minimum number of three species, representing three different phyla (e.g., a fish, an invertebrate, and a plant) be used to test an effluent for toxicity." In addition, EPA's NPDES regulations at 40 CFR 122.44(d)(1)(ii) require that when a permitting authority is determining WET reasonable potential for exceeding a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for (in addition to other requirements listed in the regulatory cite) the sensitivity of the species to toxicity testing (when evaluating WET).

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter	Methodology [57]	Reference (method number or page)					
		EPA [52]	Standard methods (18th, 19th)	Standard methods (20th)	Standard methods on-line	ASTM	USGS/AOAC/other
1. Acidity, as $CaCO_3$, mg/L	Electrometric, endpoint or phenolphthalein endpoint.		2310 B(4a)	2310 B(4a)	2310 B(4a)–01	D1067–92, 02	I–1020–85 [2]
2. Alkalinity, as $CaCO_3$, mg/L	Electrometric or Colorimetric titration to pH 4.5, manual, or		2320 B	2320 B	2320 B–97	D1067–92, 02	973.43 [3], I–1020–85 [2]
	automatic	310.2 (Rev. 1974) [1]					I–2030–85 [2]
3. Aluminum—Total, [4] mg/L	Digestion [4] followed by:						
	AA direct aspiration [36]		3111 D		3111 D–99		I–3051–85 [2]
	AA furnace		3113 B		3113 B–99		
	STGFAA	200.9, Rev. 2.2 (1994)					
	ICP/AES [36]	200.7, Rev. 4.4(1994)	3120 B	3120 B	3120 B–99		I–4471–97 [50]
	ICP/MS	200.8, Rev. 5.4 (1994)				D5673–02	993.14 [3]
	Direct Current Plasma (DCP) [36].					D4190–94, 99	Note 34
	Colorimetric (Eriochrome cyanine R).		3500–Al D	3500–Al–B	3500–Al–B–01		
4. Ammonia (as N), mg/L	Manual, distillation (at pH 9.5) [6] followed by:	350.1, Rev. 2.0 (1993)	4500–NH_3 B	4500–NH_3 B	4500–NH_3 B–97		973.49 [3]
	Nesslerization		4500–NH_3 C (18th only)			D1426–98, 03 (A)	973.49 [3], I–3520–85 [2]
	Titration		4500–NH_3 C (19th) and 4500–NH_3 E (18th)	4500–NH_3 C	4500–NH_3 C–97		
	Electrode		4500–NH_3 D or E (19th) and 4500–NH_3 F or G (18th)	4500–NH_3 D or E	4500–NH_3 D or E–97	D1426–98, 03 (B)	
	Automated phenate, or	350.1, Rev. 2.0 (1993)	4500–NH_3 G (19th) and 4500–NH_3 H (18th)	4500–NH_3 G	4500–NH_3 G–97		I–4523–85 [2]
	Automated electrode						Note 7
5. Antimony—Total, [4] mg/L	Digestion [4] followed by:						
	AA direct aspiration [36]		3111 B		3111 B–99		
	AA furnace		3113 B		3113 B–99		
	STGFAA	200.9, Rev. 2.2 (1994)					
	ICP/AES [36]	200.7, Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99		
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–02	993.14 [3]
6. Arsenic—Total, [4] mg/L	Digestion [4] followed by:	206.5 (Issued 1978) [1]					
	AA gaseous hydride		3114 B 4.d		3114 B 4.d–97	2972–97, 03 (B)	I–3062–85 [2]
	AA furnace		3113 B		3113 B–99	D2972–97, 03 (C)	I–4063–98 [49]
	STGFAA	200.9, Rev. 2.2 (1994)					
	ICP/AES [36]	200.7, Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99		
	ICP/MS	200.8, Rev. 5.4 (1994)				D5673–02	993.14 [3]
	Colorimetric (SDDC)		3500-As C	3500-As B	3500-As B–97	2972–97, 03(A)	I–3060–85
7. Barium—Total, [4] mg/L	Digestion [4] followed by:						
	AA direct aspiration [36]		3111 D		3111 D–99		I–3084–85 [2]
	AA direct furnace [36]		3113 B		3113 B–99	D4382–95, 03	

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [57]	Reference (method number or page)					
		EPA [52]	Standard methods (18th, 19th)	Standard methods (20th)	Standard methods on-line	ASTM	USGS/AOAC/other
	ICP/AES [36]	200.7, Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99		
	ICP/MS	200.8, Rev. 5.4 (1994)				D5673–02	993.14 [3]
	DCP [36]						Note 34
8. Beryllium—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 D		3111 D–99	3645–98(88), 03(A)	I–3095–85 [2]
	AA furnace		3113 B		3113 B–99	D3645–98(88), 03(B)	
	STGFAA	200.9, Rev. 2.2 (1994)					
	ICP/AES	200.7, Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99		
	ICP/MS	200.8, Rev. 5.4 (1994)				D5673–02	993.14 [3]
	DCP, or					D4190–94, 99	Note 34
	Colorimetric (aluminon)		3500–Be D				
9. Biochemical oxygen demand (BOD_5), mg/L:	Dissolved Oxygen Depletion		5210 B	5210 B	5210 B–01		973.44,[3] p. 17.[9], I–1578–78 [6], I–3112–85 [2], I–4471–97 [50]
	Colorimetric (curcumin)		4500–B	4500–B	4500–B B–00		
10. Boron [37]—Total, mg/L:	ICP/AES	200.7, Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99		
	DCP					D4190–94, 99	Note 34
	Titrimetric					D1246–95(99)(C)	p. S44.[10], I–1125–85 [2]
11. Bromide, mg/L:	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997)	4110 B	4110 B	4110 B–00	D4327–97, 03	993.30 [3]
	CIE/UV						Waters [54]
12. Cadmium—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration [36]		3111 B or C		3111 B or C–99	D3556–97, 02 (A or B)	974.27,[3] p. 37.[9], I–3135–85 [2] or I–3136–85 [2]
	AA furnace		3113 B		3113 B–99	D3557–95, 02 (D)	I–4138–89 [51]
	STGFAA	200.9, Rev. 2.2 (1994)					
	ICP/AES [36]	200.7, Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99		I–1472–85 [2] or I–4471–97 [50]
	ICP/MS	200.8, Rev. 5.4 (1994)				D5673–02	993.14 [3]
	DCP [36]					D4190–94, 99 [8] D3557–95, 02 (C)	Note 34
	Voltametry [11], or						
	Colorimetric (Dithizone)		3500–Cd D		3500–Cd D–90		
13. Calcium—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 B		3111 B–99	D511–93, 03(B)	I–3152–85 [2]
	ICPA/AES	200.7, Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99		I–4471–97 [50]
	DCP, or						Note 34
	Titrimetric (EDTA)		3500–Ca D	3500–Ca B	3500–Ca B–97	D511–93, 03(A) D 6919–03	
	Ion Chromatography						
	Dissolved Oxygen Depletion with nitrification inhibitor.		5210 B	5210 B	5210 B–01		
14. Carbonaceous Biochemical oxygen demand ($CBOD_5$), mg/L_{12}.							
15. Chemical oxygen demand (COD), mg/L	Titrimetric	410.3 (Rev. 1978) [1]	5220 C	5220 C	5220 C–97	D1252–95, 00 (A)	973.46,[3] p. 17.[9] I–3560–85 [2]

	Spectrophotometric, manual or automatic.	410.4, Rev. 2.0 (1993)	5220 D	5220 D	5220 D–97	D1252–95, 00 (B)	Notes 13, 14. I–3561–85[2]
16. Chloride, mg/L	Titrimetric (silver nitrate) or		4500–Cl B	4500–Cl B	4500–CL B–97	D512–89 (99) (B)	I–1183–85[2]
	(Mercuric nitrate)		4500–Cl–C	4500–Cl–C	4500–Cl–C–97	D512–89(99) (A)	973.51,[3] I–1184–85[2]
	Colorimetric, manual or						I–1187–85[2]
	Automated (Ferricyanide)		4500–Cl–E	4500–Cl–E	4500–Cl–E–97		I–2187–85[2]
	Potentiometric Titration		4500–Cl–D	4500–Cl–D	4500–Cl–D–97		
	Ion Selective Electrode					D512–89(99) (C)	
	Ion Chromatography	300.0 Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997)	4110 B	4110 B	4110 B–00	D4327–97	993.30[3]
	CIE/UV						Waters[54]
17. Chlorine—Total residual, mg/L; Titrimetric:	Amperometric direct, or		4500–Cl D	4500–Cl D	4500–Cl D–00		
	Amperometric direct (low level)		4500–Cl E	4500–Cl E	4500–Cl E–00		
	Iodometric direct		4500–Cl B	4500–Cl B	4500–Cl B–00		
	Back titration ether end-point[15] or.		4500–Cl C	4500–Cl C	4500–Cl C–00		
	DDP–FAS		4500–Cl F	4500–Cl F	4500–Cl F–00		
	Spectriogitinetrucm		4500–Cl G	4500–Cl G	4500–Cl G–00		
	DPD						Note 16
	Or Electrode						
18. Chromium VI dissolved, mg/L	0.45 micron Filtration followed by:						
	AA chelatoin-extraction or		3111 C		3111 C–99		I–1232–85
	Ion Chromatography	218.6, Rev. 3.3 (1994)	3500–Cr E	3500–Cr C	3500–Cr C–01	D5257–97	993.23
	Colorimetric (Diphenylcarbazide).		3500–Cr D	3500–Cr B	3500–CR B–01	D1687–92, 02 (A)	I–1230–85
19. Chromium—Total,[4] mg/L	Digestion[4] followed by:						
	AA direct aspriation[36]		3111B		3111 B–99	D1687–92, 02 (B)	974.27[3], I–3236–95[2]
	AA chelation-extraction		3111 C		3111 C–99		
	AA fumace		3113 B		3113 B–99	D1687 92, 02 (C)	I–3233–93[46]
	STGFAA	200.9, Rev. 2.2 (1994)					
	ICP/AES[36]	200.7, Rev/ 4/4 (1994)	3120 B	3120 B	3120 B–99		
	ICP/MS	200.8, Rev. 5.4 (1994)				D5673–02	993.14[3]
	DCP,[36]					D4190–94, 99	Note 34
	Colorimetric (Diphenylcarbazide).		3500–Cr D	3500–Cr B	3500–Cr B 01		
20. Cobalt—Total,[4] mg/L	Digestion[4] followed by:						
	AA direct aspriation		3111 B or C		3111 B or C–99	D3558–94, 03 (A or B)	p. 37[9], I–3239–85[2]
	AA furnace		3113 B		311 B–99	D3558–94, 03 (C)	I–4243–89[51]
	STGFAA	200.9, Rev. 2.2 (1994)					
	ICP/AES	200.7, Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99		I–4471–97[50]
	ICP/MS	200.8, Rev. 5.4 (1994)				D5673–02	993.14[3]
	DCP					D4190–94, 99	Note 34
21. Color platinum cobalt units or dominant wavelength, hue luminance purity:.	Colorimetric (ADMI), or		2120 E	2120E			Note 18
	(Platinum cobalt), or		2120 B	2120 B	2120 B–01		I–1250–85[2]
	Spectrophotometric		2120 C	2120 C			
Copper-Total,[4] mg/L	Digestion[4] followed by:						
	AA direct aspiration[36]		3111 B or C		3111 B or C–99	D1688–95, 02 (A or B)	974.27[3] p. 37.[9] I–3270–85[2] or I–3271–85[2]
	AA furnace		3113 B		3113 B–99		I–4274–89[51]
	STGFAA	200.9, Rev. 2.2 (1994)					

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [57]	Reference (method number or page)					
		EPA [52]	Standard methods (18th, 19th)	Standard methods (20th)	Standard methods on-line	ASTM	USGS/AOAC/other
	ICP/AES [36]	200.7, Rev. 4.4 (1994)	3120 B		3120 B–99		I4471–97 [50]
	ICP/MS	200.8 Rev. 5.4 (1994)				D5673–02	993.14 [3]
	DCP [36] or				D4190–94, 99	Note 34	
	Colorimetric (Neocuproine) or		3500–Cu D	3500–Cu B	3500–Cu B–99		Note 19
	Bicinchoninate)		3500–Cu B	3500–Cu B	3500–Cu C–99		Kelada–01 [55]
23. Cyanide-Total, mg/L:	Automated Distillation and Colorimetry, or.					D2036–98(A)	10–204–00–1–X [56]
	Manual distillation with $MgCl_2$ followed by.	335.4 Rev. 1.0 (1993) [57]	4500–CN–C	4500–CN–C			p. 22 [9]
	Titrimetric, or		4500–CN–D	4500–CN–D	4500–CN–D–99		I–3300–85
	Spectrophotometric, manual or ..		4500–CN–E	4500–CN–E	4500–CN–E–99	D2036–98(A)	10–204–00–1–X [56],
	Automated [20], or	335.4, Rev. 1.0 (1993) [57]					1–4302–85 [2]
	Ion Selective Electrode		4500–CN–F	4500–CN–F	4500–CN–F–99	D2036–98(A)	
24. Available Cyanide, mg/L:	Cyanide Amenable to Chlorination (CATC); Manual distillation with $MgCl_2$ followed by Titrimetric or Spectrophotometric.		4500–CN–G	4500–CN–G	4500–CN–G–99	D2036–98(B)	
	Flow injection and ligand exchange, followed by amperometry..					D6888–03	OIA–1677 [44]
	Automated Distillation and Colorimetry.						Keleda–01 [55]
	Manual distillation [6] followed by ..		4500–F–B	4500–F–B	4500–F–B–97		
25. Fluoride—Total, mg/L:	Electrode, manual or				4500F–C–97	D1179–93, 99 (B)	I–4327–85 [2]
	Automated or					D1179–93, 99 (A)	
	Colorimetric (SPADNS) or		4500–F–D	4500–F–D	4500–F–D–97		
	Automated complexone		4500–F–E	4500–F–E	4500–F–E–97		
	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1 Rev 1.0 (1997)	4110 B	4110 B	4110 B–00	D4327–97,03	993.30 [3]
							Waters [54]
	CIE/UV						
26. Gold—Total [4] mg/L	Digestion [4] followed by:.						
	AA direct aspiration, or		3111 B		3111 B–99		
	AA furnace, or	231.2 (Rev. 1878) [1]					
	STGFAA	200.9 Rev. 2.2 (1994)					Note 34
	DCP						
27. Hardness—Total, as $CaCO_3$, mg/L	Automated colorimetric,	130.1 (Issued 1971) [1]					
	Titrimetric (EDTA), or		2340 B or C	2340 B or C	2340 B or C–97	D1136–86(92), 02	973.52B.[3], I–1338–85 [2]
	Ca plus Mg as their carbonates, by inductively coupled plasma or AA direct aspiration. (See Parameters 13 and 33).						
28. Hydrogen ion (pH), pH units	Electrometric measurement, or ..		4500–H^+ B	4500–H^+ B	4500–H^+ B–00	D1293–84 (90), 99 (A or B)	973.41.[3], I–1586–85 [2]
	Automated electrode	150.2 (Dec. 1982) [1]					Note [21, I–2587–85 [2]
29. Iridium—Total, [4] mg/L	Digestion [4] followed by:.						
	AA direct aspiration or		3111 B		3111 B–99		
	AA furnace	235.2 (Issued 1978) [1]					
30. Iron—Total, [4] mg/L	Digestion [4] followed by:.						

	AA direct aspiration [36]		3111 B or C		3113 B–89, 93, 99	D1068–96, 03 (A or B)	974.27.[3], I–3381–85[2]
	AA furnace		3113 B		3113 B–99	D 1068–96, 03 (C)	
	STGFAA	200.9, Rev. 2.2 (1994)					I–4471–97[50]
	ICP/AES [36]	200.7, Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99	D4190–94, 99	Note 34
	DCP [36]					D1068–96, 03 (D)	Note 22
	Colorimetric (Phenanthroline)		3500–Fe D	3500–Fe B	3500–Fe B–97	D3590–89, 02 (A)	
31. Kjeldahl Nitrogen [5]—Total, (as N), mg/L	Digestion and distillation followed by: [20].		4500–N_{org} B or C with 4500–NH_3 B	4500–N_{org} B or C with 4500–NH_3 B	4500–N_{org} B or C–97 with 4500–NH_3 B–97		
	Titration, or		4500–NH_3 C (19th) and 4500–NH_3 E (18th)	4500–NH_3 C	4500–NH_3 C–97	D3590–89, 02 (A)	973.48[3]
	Nesslerization, or		4500–NH_3 C (18th Only)			D3590–89, 02 (A)	
	Electrode		4500–NH_3 F or G (18th) and 4500–NH_3 D or E (19th)	4500–NH_3 D or E	4500–NH_3 D or E–97		
	Automated phenate colorimetric.	351.1 (Rev. 1978) [1]					I–4551–78[8]
	Semi-automated block digestor colorimetric.	351.2, Rev. 2.0 (1993)				D3590–89, 02(B)	I–4515–91[45]
	Manual or block digestor potentiometric.					D3590–89, 02 (A)	
	Block digester, followed by Auto distillation and Titration, or.						Note 39
	Nesslerization, or						Note 40
	Flow injection gas diffusion						Note 41
32. Lead—Total,[4] mg/L	Digestion [4] followed by:					D3559–96, 03 (A or B)	[3]974.27, [2]I–3399–85
	AA direct aspiration [36]		3111 B or C		3111 B or C–99	D3559–96, 03 (D)	[51]I–4403–89
	AA furnace		3113 B		3113 B–99		
	STGFAA	200.9, Rev. 2.2 (1994)					[50]I–4471–97
	ICP/AES [36]	200.7, Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99	D5673–02	[3]993.14
	ICP/MS	200.8, Rev. 5.4 (1994)				D4190–94, 99	Note 34
	DCP					D3559–96, 03 (c)	
	Voltametry [11] or						
	Colorimetric (Dithizone)		3500–Pb D	3500–Pb B	3500–Pb B–97		
33. Magnesium—Total,[4] mg/L	Digestion [4] followed by:					D511–93, 93 (b)	[3]974.27, [2]I–3447–85
	AA direct aspiration		3111 B		3111 B–99		[50]I–4471–97
	ICP/AES	200.7, Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99		Note 34
	DCP or						
	Gravimetric		3500–Mg D			D6919–03	
	Ion Chromatography						
34. Manganese—Total,[4] mg/L	Digestion [4] followed by:					D858–95 (A or B)	[3]974.27, [2]I–3454–85
	AA direct Aspiration [36]		3111 B		3111 B–99	D858–95, 02 (c)	
	AA furnace		3113 B		3113 B–99		
	STGFAA	200.9, Rev. 2.2 (1994)					[50]I–4471–97
	ICP/AES [36]	200.7, Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99	D5673–02	[3]993.14
	ICP/MS	200.8, Rev. 5.4 (1994)				D4190–94, 99	Note 34
	DCP [36], or						[3]920.203
	Colorimetric (Persulfate), or (Periodate)		3500–Mn D	3500–Mn B	3500–Mn B–99		Note 23

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [57]	Reference (method number or page)					
		EPA [52]	Standard methods (18th, 19th)	Standard methods (20th)	Standard methods on-line	ASTM	USGS/AOAC/other
35. Mercury—Total [4], mg/L:	Cold vapor, manual or	245.1, Rev. 3.0 (1994)	3112 B		3112 B–99	D3223–91	[3] 977.22, [2] I-3462–85
	Automated	245.2 (Issued 1974)					
	Cold vapor atomic fluorescence spectrometry (CVAFS).	245.7 (Dec. 2003) [56]					
	Purge and Trap CVAFS	1631E [43]					
Molybedenum—Total [4], mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 D		3111 D–99		[2] I–3490–85
	AA furnace		3113 B		3113 B–99		[47] I–3492–96
	ICP/AES	200.7, Rev. 4.4 (1994)	3120 B		3120 B–99		[50] I–4471–97
	ICP/MS	200.8, Rev. 5.4 (1994)				D5673–02	[3] 993.14
	DCP						Note 34
37. Nickel-Total, [4] mg/L	Digestion [4] followed by:						
	AA direct aspiration [36]		3111 B or C		3111 B or C–99	D1886–90, 94 (98) (A or B)	I–3499–85 [2]
	AA furnace		3113 B		3113 B–99	D1886–90, 94 (98)(C)	I–4503–89 [51]
	STGFAA	200.9, Rev. 2.2 (1994)					
	ICP/AES [36]	200.7, Rev. 4.4 (1994)					
	ICP/MS	200.8, Rev. 5.4 (1994)				D5673–02	993.14 [3]
	DCP [36], or					D4190–94, 99	Note 34
	Colorimetric (heptoxime)		3500–Ni D (17th Edition)				
38. Nitrate (as N), mg/L	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997)	4110 B	4110 B	4110 B–00	D4327–97, 03	993.30 [3]
	CIE/UV						Waters [54]
	Ion Selective Electrode		4500 NO_3 minus; D	4500 NO_3 minus; D	4500 NO_3 minus; D–00		
	Colorimetric (Brucine sulfate), or	352.1 [1]					97.50 [3] 419D [17], p. 28. [9]
	Nitrate-nitrite N minus Nitrite N (See parameters 39 and 40).						
39. Nitrate-nitrite (as N), mg/L	Cadmimum reduction, Manual or		4500–NO_3 minus; E	4500–NO_3 minus; E	4500–NO_3 minus; E–00	D3867–99(B)	
	Automated, or	353.2, Rev. 2.0 (1993)	4500–NO_3 minus; F	4500–NO_3 minus; F	4500–NO_3 minus; F–00	D3867–99(A)	I–4545–85 [2]
	Automated hydrazine		4500–NO_3 minus; H	4500–NO_3 minus; H	4500–NO_3 minus; H–00	D4327–97	
	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997)	4110 B	4110 B	4110 B–00	4327–97, 03	993.30 [3]
	CIE/UV						Waters [54]
40. Nitrite (as N), mg/L	Spectrophoto-metric: Manual or		4500–NO_2 B	4500–NO_2 B	4500–NO_2 B–00		Note 25
	Automated (Diazotization)						I–4540–85 [2]
	Automated (*bypass cadmium reduction).	353.2, Rev. 2.0 (1993)	4500–NO_3 minus; F	4500–NO_3 minus; F	4500–NO_3 minus; F–00	D3867–99(A)	
	Manual (* bypass cadmium reduction).		4500–NO_3 minus; E	4500–NO_3 minus; E	4500–NO_3 minus; E–00		

	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997)	4110 B	4110 B	4110 B–00	D4327–97, 03	993.30[3]
	CIE/UV						Waters[54]
41. Oil and grease—Total recoverable, mg/L	Hexane extractable material (HEM); n-Hexane extraction and gravimetry.	1664A[42]	5520 B[38]	5520 B[38]	5520 B–01[38]		
	Silica gel treated HEM (SGT–HEM): Silica gel treatment and gravimetry.	1664A[42]					
42. Organic carbon—Total (TOC), mg/L	Combustion or oxidation		5310 B, C, or D	5310 B, C, or D	5310 B, C, or D–00	2579–93 (A or B)	973.47,[3] p. 14.[24]
43. Organic nitrogen (as N), mg/L	Total Kjeldahl N (Parameter 31) minus ammonia N (Parameter 4).						
44. Orthophosphate (as P), mg/L	Ascorbic acid method:						973.56[3], I–4601–85[2]
	Automated, or	365.1, Rev. 2.0 (1993)	4500–P F	4500–P F			
	Manual single reagent		4500–P E	4500–P E		D515–88(A)	973.55[3]
	Manual two reagent	365.3, (Issued 1978)[1]					
	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1 Rev. 1.0 (1997)	4110 B	4110 B	4110 B–00	D4327–97, 03	993.30[33]
	CIE/UV						Waters[54]
45. Osmium-Total[4], mg/L	Digestion[4] followed by:		3111 D		3111 D–99		
	AA direct aspiration, or	252.2 (Issued 1978)[1]					
	AA furnace						
46. Oxygen, dissolved, mg/L	Winkler (Azide modification), or		4500–O C	4500–O C	4500–O C–01	888–92, 03 (A)	I–1576–78[8]
	Electrode		4500–O G	4500–O G	4500–O G–01	D888–92, 03 (B)	1–1576–78[8]
47. Palladium—Total,[4] mg/L	Digestion[4] followed by		3141 B		3111 B–99		p. S27.[10]
	AA direct aspiration, or						p. S28.[10]
	AA furnace	253.2[1] (Issued 1978)					Note 34.
	DCP						Note 27.
48. Phenois, mg/L	Manual distillation[26] Followed by:.	420.1[1] (Rev. 1978)					Note 27.
	Colorimetric (4AAP) manual, or	420.1[1] (Rev. 1978)					
	Automated	420.4 Rev. 1.0 (1993)					Note 28.
49. Phosphorus (elemental), mg/L	Gas-liquid chromatography						973.55[3]
50. Phosphorus—Total, mg/L	Persulfate digestion followed by:[29].		4500–P B.5	4500–P B.5			
	Manual or	365.3[1] (Issued 1978)	4500–P E	4500–P E		D515–88(A)	
	Automated ascorbic acid reduction.	365.1 Rev. 2.0 (1993)	4500–P F	4500–P F			973.56[3], I–400–85[2]
	Semi-automated block digestor	365.4[1] (Issued 1974)				D515–88(B)	I–4610–91[48]
51. Platinum-Total,[4] mg/L	Digestion[4] followed by:.						
	AA direct aspiration		3111 B		3111 B–99		
	AA furnace	255.2[1]					Note 34
	DCP						
52. Potassium-Total,[4] mg/L:	Digestion[4] followed by:.						973.53[3], 1–3630–85[2]
	AA direct aspiration		3111 B		3111 B–99		
	ICP/AES	200.7, Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99		
	Flame photometric or		3500–K D	3500–K B	3500–K B–99		317 B[17]
	Colorimetric					D 6919–03	
	Ion Chromatography						I–3750–85[2]
53. Residue-Total, mg/L	Gravimetric, 103–105°		2540 B	2540 B	2540 B–97		I–1750–85[2]
54. Residue-filterable, mg/L	Gravimetric, 180°		2540 C	2540 C	2540 C–97		

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [57]	Reference (method number or page)					
		EPA [52]	Standard methods (18th, 19th)	Standard methods (20th)	Standard methods on-line	ASTM	USGS/AOAC/other
55. Residue-non-filterable (TSS), mg/L	Gravimetric, 103–105° post washing of residue.		2540 D	2540 D	2540 D–97		I–3765–85 [2]
56. Residue-settleable, mg/L:	Volumetric, (Imhoff cone), or gravimetric.		2540 F	2540 F	2540 F–97		
57. Residue-Volatile, mg/L	Gravimetric, 550°	160.4 [1]					I–3753–85 [2]
58. Rhodium-total,[4] mg/L	Digestion [4] followed by:.						
	AA direct aspiration, or		3111 B	3111 B	3111 B–99		
	AA furnace	265.2 [1]					
	STGFAA	200.9, Rev. 2.2 (1994)					
59. Ruthenium-Total,[4] mg/L	Digestion [4] followed by:.						
	AA direct aspiration, or		3111 B		3111 B–99		
	AA furnace	267.2 [1]					
	STGFAA	200.9, Rev. 2.2 (1994)					
60. Selenium-Total,[4] mg/L	Digestion [4] followed by:.						
	AA furnace		3113 B		3113 B–99	D3859–98, 03 (B)	I–4668–98 [49]
	STGFAA	200.9, Rev. 2.2 (1994)					
	ICP/AES,[36]	200.7 [5], Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99		
	ICP/MS	200.8, Rev. 5.4 (1994)				D5673–02	993.14 [3]
	AA gaseous hydride		3114 B	3114 B	3114 B–97	D3859–98, 03 (A)	I–3667–85 [2]
61. Silica [37]-Dissolved, mg/L	0.45 micron filtration followed by:.						
	Colorimetric, Manual or		4500-Si D	4500-SiO_2	4500-SiO_2 C–97	D859–94, 00	I–1700–85 [2]
	Automated (Molybdosilicate), or.						I–2700–85 [2]
	ICP/AES	200.7, Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99		I–4471–97 [50]
62. Silver-Total,[4] mg/L	Digestion [4, 29] followed by:.						
	AA direct aspiration		3111 B or C		3111 B or C–99		974.27 [3], p. 37 [9], I–3720–85 [2]
	AA furnace		3113 B		3113 B–99		I–4724–89 [51]
	STGFAA	200.9, Rev. 2.2 (1994)					
		ICP/AES	200.7, Rev. 4.4 (1994)	3210 B	3120 B	3120 B–99	I–4471–97 [50]
	ICP/MS	200.8, Rev. 5.4 (1994)				D5673–02	993.14 [3]
	DCP						Note 34
63. Sodium-Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 B		3111 B–99		973.54 [3], I–3735–85 [2]
	ICP/AES	200.7, Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99		I–4471–97 [50]
	DCP, or						Note 34
	Flame photometric		3500-Na D	3500-Na B	3500-Na B–97		
	Ion Chromatography					D 6919–03	
64. Specific conductance, micromhos/cm at 25°, C.	Wheatstone bridge	120.1 [1] (Rev. 1982)	2510 B	2510 B	2510 B–97	D1125–95 (99)(A)	973.40 [3], I–2781–85 [2]
65. Sulfate (as SO_4), mg/L	Automated colorimetric	375.2, Rev. 2.0 (1993)					
	Gravimetric		4500-SO^{4-2} C	4500-SO^{4-2} C			925.54. [3]
	Turbidimetric					D516–90, 02	426C. [30]

	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997)	4110 B	4110 B	4110 B–00	D4327–97, 03	993.30 [33]
	CIE/UV						Waters [54]
66. Sulfide (as S), mg/L	Titrimetric (iodine), or		4500-S $^{-2}$F (19th) 4500-S $^{-2}$E (18th)	4500-S $^{-2}$F–00		I–3840–85 [2]	
	Colorimetric (methylene blue)		4500-S $^{-2}$D	4500-S $^{-2}$D–00	4500-S $^{-2}$		
	Ion Selective Electrode		4500-S $^{-2}$G	4500-S $^{-2}$G	4500-S $^{-2}$G–00	4652–03	
67. Sulfite (as SO_3), mg/L	Titrimetric (iodine-iodate)		4500-SO_3 $^{-2}$B	4500-SO_3 $^{-2}$B	4500-SO_3 $^{-2}$B–00		
68. Surfactants, mg/L	Colorimetric (methylene blue)		5540 C	5540 C	5540 C–00	D2330–88, 02	
69. Temperature, °C		Thermometric	2550 B	2550 B	2550 B–00		Note 32
70. Thallium-Total,[4] mg/L	Digestion [4] by:						
	AA direct aspiration		3111 B		3111 B–99		
	AA furnace	279.2 [1] (Issued 1978)					
	STGFAA	200.9, Rev. 2.2 (1994)					
	ICP/AES	200.7, Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99		
	ICP/MS	200.8, Rev. 5.4 (1994)				D5673–02.	993.14 [3]
71. Tin-Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 B		3111 B–99		I–3850–78 [8]
	AA furnace, or		3113 B		3113 B–99		
	STGFAA	200.9, Rev. 2.2 (1994)					
	ICP/AES	200.7, Rev. 4.4 (1994)					
72. Titanium-total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 D		3111 D–99		
	AA furnace	283.2 [1] (Issued 1978)					
	DCP						Note 34
73. Turbidity, NTU [53]	Nephelometric	180.1, Rev. 2.0 (1993)	2130 B	2130 B	2130 B–01	D1889–94, 00 (A)	I–3860–85 [2]
74. Vanadium-total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 D		3111 D–99		
	AA furnace					D3373–93, 03	
	ICP/AES	200.7, Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99		I–4471–97 [50].
	ICP/MS	200.8, Rev. 5.4 (1994)				D5673–02	993.14 [3]
	DCP, or					D4190–94, 99	Note 34.
	Colorimetric (Gallic Acid)		3500–V D	3500–V B	3500–V B–97		
75. Zinc-total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration [36]		3111 B or C		3111 B or C–99	D1691–95, 02 (A or B)	974.27 [3], p. 37 [9], I–3900–85 [2].
	AA furnace	289.2 [1] (Issued 1978)					
	ICP/AES [36]	200.7, Rev. 4.4 (1994)	3120 B	3120 B	3120 B–99 [59]		I–4471–97 [50].
	ICP/MS	200.8, Rev. 5.4 (1994)			D5673–02	993.14 [3]	
	DCP,[36] or					D4190–94, 99	Note 34
	Colorimetric (Dithizone) or		3500–ZN E				
	(Zincon)		3500–Zn F	3500–Zn B	3500–ZN B–97		Note 33.

Table 1B Notes:

[1] "Methods for Chemical Analysis of Water and Wastes," Environmental Protection Agency, Environmental Monitoring Systems Laboratory-Cincinnati (EMSL–CI), EPA–600/4–79–020 (NTIS PB 84–128677), Revised March 1983 and 1979 where applicable."

[2] Fishman, M.J., *et al.* "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

[3] "Official Methods of Analysis of the Association of Official Analytical Chemists," methods manual, 16th ed.

[4] For the determination of total metals (which are equivalent to total recoverable metals) the sample is not filtered before processing. A digestion procedure is required to solubilize analytes in suspended materiel and to break down organic-metal complexes (to convert the analyte to a detectable form for colorimetric anelysis). For non-pletform graphite fumace atomic absorption determinations e digestion using nitric ecid is required prior to anelysis. The procedure used should subject the sample to gentle, acid refluxing and at no time should the sample be taken to dryness. For direct aspiration flame etomic absorption determinetions (FLAA) a combination acid (nitric and hydrochloric acids) digestion is preferred pnor to analysis. The approval total recoverable digestion is described es Method 200.2 in Supplement I of "Methods for the Determination of Metals in Environmental Samples" EPA/600R–94/111, May, 1994, and is reproduced in EPA Methods 200.7, 200.8, end 200.9 from the same Supplement. However, when using the gaseous hydride technique or for the determination of certain elements such as antimony, arsenic, selenium, silver, and tin by non-EPA graphite furnace atomic absorption methods, mercury by cold vapor atomic absorption, the noble metals and titanium by FLAA, a specific or modified sample digestion procedure may be required end in all cases the referenced method write-up should be consulted for specific instruction and/or cautions. For analyses using inductively coupled plasma-atomic emission spectrometry (ICP–AES), the direct current plasma (DCP) technique or the EPA spectrochemical techniques (platform fumece AA, ICP–AES, and ICP–MS) use EPA Method 200.2 or an approved alternate procedure (*e.g.,* CEM microwave digestion, which may be used with certain analytes as indicated in Table IB); the total recovereble digestion procedures in EPA Methods 200.7, 200.8, end 200.9 may be used for those respective methods. Regardless of the digestion procedure, the results of the analysis after digestion procedure are reported as "total" metals.

[5] Copper sulfate must be used in place of mercuric sulfate.

[6] Manual distillation is not required if comparability data on representative effluent samples are on file to show that this preliminery distillation step is not necessary: however, manual distillation will be required to resolve any controversies.

[7] Ammonia, Automated Electrode Method, Industrial Method Number 379–75 WE, dated February 19, 1976, Bran & Luebbe (Technicon) Auto Analyzer II, Bren & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

[8] The approved method is that cited in "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments", USGS TWRI, Book 5, Chapter A1 (1979).

[9] American National Standard on Photographic Processing Effluents, Apr. 2, 1975. Available from ANSI, 1430 Broadway, New York, NY 10018.

[10] Selected Analytical Methods Approved end Cited by the United States Environmental Protection Agency," Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[11] The use of normal and differential pulse voltage ramps to increase sensitivity and resolution is acceptable.

[12] Carbonaceous biochemical oxygen demand ($CBOD_5$) must not be confused with the traditional BOD_5 test method with measures "total BOD." The addition of the nitrification inhibitor is not a procedural option, but must be included to report the $CBOD_5$ parameter. A discharger whose permit requires reporting the traditional BOD_5 may not use a nitrification inhibitor in the procedure for reporting the results. Only when a discharger's permit specifically states $CBOD_5$ is required can the permittee report data using e nitrification inhibitor.

[13] OIC Chemical Oxygen Demand Method, Oceanography International Corporation, 1978, 512 West Loop, P.O. Box 2980, College Station, TX 77840.

[14] Chemical Oxygen Demand, Method 8000, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[15] The back titration method will be used to resolve controversy.

[16] Orion Research Instruction Manuel, Residual Chlorine Electrode Model 97–70, 1977, Orion Research Incorporated, 840 Memorial Drive, Cambridge, MA 02138. The calibration graph for the Orion residual chlorine method must be derived using a reagent blank end three standard solutions, containing 0.2, 1.0, and 5.0 mL 0.00281 N potassium iodate/100 mL solution, respectively.

[17] The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition, 1976.

[18] National Council of the Paper Industry for Air and Stream Improvement, Inc. Technical Bulletin 253, December 1971.

[19] Copper, Biocinchoinate Method, Method 8506, Hach Hendbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[20] When using e method with block digestion, this treatment is not required.

[21] Hydrogen ion (pH) Automated Electrode Method, Industrial Method Number 378–75WA, October 1976, Bran & Luebbe (Technicon) Autoanalyzer II. Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

[22] Iron, 1,10-Phenanthroline Method, Method 8008, 1980, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[23] Manganese, Periodate Oxidation Method, Method 8034, Hach Handbook of Wastewater Analysis, 1979, pages 2–113 and 2–117, Hach Chemical Company, Loveland, CO 80537.

[24] Wershaw, R.L., et al, "Methods for Analysis of Organic Substances in Water," Techniques of Water-Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A3, (1972 Revised 1987) p. 14.

[25] Nitrogen, Nitrite, Method 8507, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[26] Just prior to distillation, adjust the sulfuric-acid-preserved sample to pH 4 with 1 + 9 NaOH.

[27] The approved method is cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition. The colorimetric reaction is conducted at a pH of 10.0± 0.2. The epproved methods are given on pp 576–81 of the 14th Edition: Method 510A for distillation, Method 510B for the manual colorimetric procedure, or Method 510C for the manual spectrometric procedure.

[28] R.F. Addition and R.G. Ackman, "Direct Determination of Elemental Phosphorus by Gas-Liquid Chromatography," Journal of Chromatography, Vol. 47, No. 3, pp. 421–426, 1970.

[29] Approved methods for the analysis of silver in industrial wastewaters at concentrations of 1 mg/L and above are inadequate where silver exists es an inorganic halide. Silver halides such as the bromide and chloride are relatively insoluble in reagents such as nitric acid but are readily soluble in an aqueous buffer of sodium thiosulfate and sodium hydroxide to pH of 12. Therefore, for levels of silver above 1 mg/L, 20 mL of sample should be diluted to 100 mL by adding 40 mL each of 2 M $Na_2S_2O_3$ and NaOH. Standards should be prepared in the same manner. For levels of silver below 1 mg/L the epproved method is satisfactory.

[30] The epproved method is that cited in Standard Methods for the Examination of Water and Wastewater, 15th Edition.

[31] EPA Methods 335.2 and 335.3 require the NaOH absorber solution final concentration to be adjusted to 0.25 N before colorimetric determination of total cyanide.

[32] Stevens, H.H., Ficke, J.F., and Smoot, G.F., "Water Temperature—Influential Factors, Field Measurement and Data Presentation," Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 1, Chapter D1, 1975.

[33] Zinc, Zincon Method, Method 8009, Hach Handbook of Water Analysis, 1979, pages 2–231 and 2–333, Hach Chemical Company, Loveland, CO 80537.

[34] "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Anelysis of Water and Wastes, Method AES0029," 1986—Revised 1991, Thermo Jarrell Ash Corporation, 27 Forge Parkwey, Franklin, MA 02038.

[35] Precision and recovery stetements for the atomic ebsorption direct aspiration and graphite fumace methods, end for the spectrophotometric SDDC method for arsenic are provided in Appendix D of this part titled, "Precision and Recovery Statements for Methods for Measuring Metals".

[36] "Closed Vessel Microwave Digestion of Wastewater Samples for Determinetion of Metals", CEM Corporation, P.O. Box 200, Matthews, NC 28106–0200, April 16, 1992. Available from the CEM Corporation.

[37] When determining boron and silica, only plastic, PTFE, or quartz laboratory ware may be used from start until completion of analysis.

[38] Only use *n*–hexene extraction solvent when determining Oil and Grease parameters—Hexane Extrectable Material (HEM), or Silica Gel Treated HEM (analogous to EPA Method 1664A). Use of other extraction solvents is prohibited.

[39] Nitrogen, Total Kjeldahl, Method PAI–DK01 (Block Digestion, Steam Distillation, Titrimetric Detection), revised 12/22/94, OI Analytical/ALPKEM, PO Box 9010, College Station, TX 77842.

[40] Nitrogen, Total Kjeldahl, Method PAI–DK02 (Block Digestion, Steam Distillation, Colorimetric Detection), revised 12/22/94, OI Analytical/ALPKEM, PO Box 9010, College Station, TX 77842.

[41] Nitrogen, Total Kjeldahl, Method PAI–DK03 (Block Digestion, Automated FIA Gas Diffusion), revised 12/22/94, OI Analytical/ALPKEM, PO Box 9010, College Station, TX 77842.

[42] Method 1664, Revision A "n–Hexane Extractable Material (HEM; Oil end Grease) and Silica Gel Treated n–Hexane Extrectable Material (SGT–HEM; Non-poler Material) by Extraction and Gravimetry" EPA–821–R–98–002, February 1999. Available at NTIS, PB–121949, U.S. Department of Commerce, 5285 Port Royal, Springfield, VA 22161.

[43] USEPA. 2001. Method 1631, Revision E, "Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Automic Fluorescence Spectrometry." September 2002, Office of Water, U.S. Environmental Protection Agency (EPA–821–R–02–024). The application of clean techniques described in EPA's draft Method 1669: *Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels* (EPA–821–R–96–011) are recommended to preclude contamination at low-level, trace metal determinations.

[44] Aveilable Cyanide, Method OIA–1677 (Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry), ALPKEM, A Division of OI Analytical, P.O. Box 9010, College Station, TX 77842–9010.

[45] "Methods of Analysis by the U.S. Geological Survey National Weter Quality Laboratory—Determination of Ammonia Plus Organic Nitrogen by a Kjeldahl Digestion Methods," Open File Report (OFR) 00–170.

[46] "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Chromium in Water by Graphite Fumace Atomic Absorption Spectrophotometry," Open File Report (OFR) 93–449.

[47] "Methods of analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Molybdenum by Graphite Fumace Atomic Absorption Spectrophotometry," Open File Report (OFR) 97–198.

[46] "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Total Phosphorus by Kjeldahl Digestion Method and an Automated Colorimetric Finish That Includes dialysis" Open File Report (OFR) 92–146.

[49] "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Arsenic and Selenium in Water and Sediment by Graphite Furnace—Atomic Absorption Spectrometry" Open File Report (OFR) 98–639.

[50] "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Elements in Whole-water Digests Using Inductively Coupled Plasma-Optical Emission Spectrometry and Inductively Coupled Plasma-Mass Spectrometry," Open File Report (OFR) 98–165.

[51] Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory —Determination of Inorganic and Organic Constituents in Water and Fluvial Sediment," Open File Report (OFR) 93–125.

[52] All methods, excluding EPA Method 300.1, are published in "Methods for the Determination of Metals in Environmental Samples," Supplement I, National Exposure Risk Laboratory-Cincinnati (NERL–CI), EPA/600/R–94;11, May 1994; and "Methods for the Determination of Inorganic Substances in Environmental Samples," NERL–CI, EPA/600/R–93/100, August, 1993. EPA Method 300.1 is available from *http://www.epa.gov/safewater/methods/met300.pdf*.

[53] AMCO–AEPA-1styrene divinyl beads and Hach StablCal are acceptable substitutes for formazin.

[54] Method D6508, Rev. 2, "Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion Electrophoresis and Chromate Electrolyte." available from Waters Corp, 34 Maple St., Milford, MA, 01y757, 508/482–2131 (Office), 508/482–3625 (FAX).

[55] Kelada-01, "Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, and Thiocyanate," EPA 821–B–91–009 National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 [Order Number PB 2001–108275]. Phone: 800–553–6847.

[56] QuikChem Method 10–204–00–1–X, "Digestion and Distillation of Total Cyanide in Drinking and Wastewaters using MICRO DIST and Determination of Cyanide by Flow Injection Analysis" is available from Lachat Instruments 6645 W. Mill Rd., Milwaukee, WI 53218, USA. Phone: 414–358–4200.

[57] When using sulfide removal test procedures described in Method 335.4 reconstitute particulate that is filtered with the sample prior to distillation.

[58] Unless otherwise stated, if the language of this table specifies a sample digestion and/or distillation "followed by" analysis with a method, approved digestion and/or distillation are required prior to analysis.

[59] Method 245.7, "Mercury in Water by Cold Vapor Atomic Fluorescence Spectrometry" [December 2003] (EPA–821–D–03–001).

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS

Parameter [1]	EPA method number,[2 7]			Other Approved Methods			
	GC	GC/MS	HPLC	Standard methods [edition(s)]	Standard methods on-line	ASTM	Other
1. Acenaphthene	610	625, 1625B	610	6440 B [18th, 19th, 20th].		D4657–92(99)	Note 9, p. 27.
2. Acenaphthylene	610	625, 1625B	610	6440 B, 6410 B [18th, 19th, 20th].	6410 B–00	D4657–92(99)	Note 9, p. 27.
3. Acrolein	603	[4] 624, 1624B.					
4. Acrylonitrile	603	[4] 624, 1624B.					
5. Anthracene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92(99)	Note 9, p. 27.
6. Benzene	602	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th].	6200 B and C–97.		
7. Benzidine		[5] 625, 1625B	605				Note 3, p. 1.
8. Benzo(a)anthracene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92(99)	Note 9, p. 27.
9. Benzo(a)pyrene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92(99)	Note 9, p. 27.
10. Benzo(b)fluoranthene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92(99)	Note 9, p. 27.
11. Benzo(g,h,i)perylene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92(99)	Note 9, p. 27.
12. Benzo(k)fluoranthene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92(99)	Note 9, p. 27.
13. Benzyl chloride							Note 3, p. 130: Note 6, p. S102.
14. Benzyl butyl phthalate	606	625, 1625 B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27.
15. Bis(2-chloroethoxy) methane.	611	625, 1625 B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27.
16. Bis(2-chloroethoxy) ether.	611	625, 1625 B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27.
17. Bis(2-ethylhexyl) phthalate.	606	625, 1625 B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27.
18. Bromodichloro-methane).	601	624, 1624 B		6200 C [20th, and 6230 B [18th, 19th], 6200 B [20th] and 6210 B [18th, 19th].	6200 B and C–97		
19. Bromoform	601	624, 1624 B		6200 C [20th] and 6230 B [18th, 19th], 6200 B [20th] and 6210 B [18th, 19th].	6200 B and C–97		
20. Bromomethane	601	624, 1624 B		6200 C [20th] and 6230 B [18th, 19th], 6200 B [20th] and 6210 B [18th, 19th].	6200 B and C–97		
21. 4-Bromophenylphenyl ether.	611	625, 1625 B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27.
22. Carbon tetrachloride	601	624, 1624 B		6200 C [20th] and 6230 B [18th, 19th].			Note 3, p. 130.
23. 4-Chloro-3-methyl-phenol.	604	625, 1625 B		6410 B, 6420 B [18th, 19th, 20th].	6410 B–00, 6420 B–00.		Note 9, p. 27.
24. Chlorobenzene	601, 602	624, 1624 B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97		Note 3, p. 130.
25. Chloroethane	601	624, 1624B		6200 B [20TH] and 6210 B [18th, 19th] 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97		
26. 2-Chloroethylvinylether	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97		

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number,[2 7]			Other Approved Methods			
	GC	GC/MS	HPLC	Standard methods [edition(s)]	Standard methods on-line	ASTM	Other
27. Chloroform	601	624, 1624B		6200 B[20th] and 6210 B [18th, 19th]. 6200 C [20th] and 6230 B.	6200 B and C–97		Note 3, p. 130.
28. Chloromethane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th] 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97		
29. 2-Chloronaphthalene	612	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27.
30. 2-Chlorophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].	6410–B–00, 6420 B–00		Note 9, p. 27.
31. 4-Chlorophenylphenylether.	611	625, 1625B	6410 B [18th, 19th, 20th]	6410 B–00		Note 9, p. 27..	
32. Chrysene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th]	6410 B–00	4657–92(99)	Note 9, p. 27.
33. Dibenzo(a,h)anthracene.	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th]	6410 B–00	D4657–92(99)	Note 9, p. 27.
34. Dibromochloro-methane.	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th] 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97		
35. 1,2-Dichlorobenzene	601, 602	624, 1625B		6200 C [20th] and 6220 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97		Note 9, p27
36. 1,3-Dichlorobenzene	601, 602	624, 1625B		6200C [20th] and 6220B (18th, 19th], 6200C [20th] and 6230B [18th, 19th].	6200B and C–97 ..		Note 9, p. 27
37. 1,4-Dichlorobenzene	601, 602	624, 1625B		6200C [20th] and 6220B [18th, 19th], 6200C [20th] and 6230B [18th, 19th].	6200B and C–97 ..		Note 9, p. 27
38. 3,3-Dichlorobenzidine		625, 1625B	605	6410B [18th, 19th, 20th].	6410B–00		
39. Dichlorodifluoro-methane.	601			6200C [20th] and 6230B [18th, 19th].	6200 C–97		
40. 1,1-Dichloroethane	601	624, 1624B		6200B [20th] and 6210B [18th, 19th], 6200C [20th] and 6230B [18th, 19th].	6200B and C–97 ..		
41. 1,2-Dichloroethane	601	624, 1624B		6200B [20th] and 6210B [18th, 19th], 6200C [20th] and 6230B [18th, 19th].	6200B and C–97 ..		
42. 1,1-Dichloroethene	601	624, 1624B		6200B [20th] and 6210B [18th, 19th], 6200C [20th] and 6230B [18th, 19th].	6200B and C–97 ..		
43. trans-1,2-Dichloroethene.	601	624, 1624B		6200B [20th] and 6210B [18th, 19th], 6200C [20th] and 6230B [18th, 19th].	6200B and C–97 ..		
44. 2,4-Dichlorophenol	604	625, 1625B		6410B, 6420B [18th, 19th, 20th].	6410B–00, 6420B–00.		Note 9, p. 27
45. 1,2-Dichloropropane	601	624, 1624B		6200 B [20th] and 6010 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97		

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number,[2 7]			Other Approved Methods			
	GC	GC/MS	HPLC	Standard methods [edition(s)]	Standard methods on-line	ASTM	Other
46. cis-1,3-Dichloropropene.	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97		
47. trans-1,3-Dichloropropene.	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97		
48. Diethyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27
49. 2,4-Dimethylphenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].	6410 B–00, 6420 B–00.		Note 9, p. 27
50. Dimethyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27
51. Di-n-butyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27
52. Di-n-octyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27
53. 2,3-Dinitrophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].	6410 B–00, 6420 B–00.		
54. 2,4-Dinitrotoluene	609	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27
55. 2,6-Dinitrotoluene	609	625, 1625B		6410 B [16th, 19th, 20th].	6410 B–00		Note 9, p. 27
56. Epichlorohydrin							Note 3, p. 130; Note 6, p. S102.
57. Ethylbenzene	602	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th].	6200 B and C–97		
58. Fluoranthene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657—92(99)	Note 9, p. 27
59. Fluorene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657—92(99)	Note 9, p. 27
60. 1,2,3,4,5,6,7–Heptachlorodi–benzofuran.		1613B [10]					
61. 1,2,3,4,7,8,9–Heptachlorodi–benzofuran.		1613B [10]					
62. 1,2,3,4,6,7,8–Heptachlorodibenzo–*p*–dioxin.		1613B [10]					
63. Hexachlorobenzene	612	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27.
64. Hexachlorobutadiene	612	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27.
65. Hexachlorocyclopentadi-ene.	612	625,[5] 1625B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27.
66. 1,2,3,4,7,8–Hexachlorodibenzofuran.		1613B [10]					
67. 1,2,3,6,7,8–Hexachlorodibenzofuran.		1613B [10]					
68. 1,2,3,7,8,9–Hexachlorodibenzofuran.		1613B [10]					
69. 2,3,4,6,7,8–Hexachlorodibenzofuran.		1613B [10]					
70. 1,2,3,4,7,8–Hexachlorodibenzo–*p*–dioxin.		1613B [10]					
71. 1,2,3,6,7,8–Hexachlorodibenzo–*p*–dioxin.		1613B [10]					
72. 1,2,3,7,8,9–Hexachlorodibenzo–*p*–dioxin.		1613B [10]					
73. Hexachloroethane	612	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27.
74. Ideno(1,2,3–cd) pyrene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92(99)	Note 9, p. 27.
75. Isophorone	609	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27.

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter[1]	EPA method number,[2 7]			Other Approved Methods			
	GC	GC/MS	HPLC	Standard methods [edition(s)]	Standard methods on-line	ASTM	Other
76. Methylene chloride	601	624, 1624B		6200 C [20th] and 6230 B [18th, 19th].	6200 C–97		Note 3, p. 130
77. 2-Methyl-4,6-dinitrophenol.	604	625, 1625B		6420 B, 6410 B [18th, 19th, 20th].	6410 B–00, 6420 B–00.		Note 9, p. 27.
78. Naphthalene	610	625, 1625B	610	6440 B, 6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27.
79. Nitrobenzene	609	625, 1625B		6410 B [18th, 19th, 20th].	6410B–00	D4657–92(99)	Note 9, p. 27.
80. 2-Nitrophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].	64310 B–00, 64320 B–00.		Note 9, p. 27.
81. 4-Nitrophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].	6410 B–00, 6420 B–00.		Note 9, p. 27.
82. N-Nitrosodimethylamine.	607	625,[5] 1625B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27.
83. N-Nitrosodi-n-propylamine.	607	625,[5] 1625B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27.
84. N-Nitrosodiphenylamine.	607	625,[5] 1625B		6410 B [18th, 19th, 20th].	6410 B–00		Note 9, p. 27.
85. Octachlorodibenzofuran.		1613B[16].					
86. Octachlorodibenzo-*p*-dioxin.		[10]1613B.					
87. 2,2′-Oxybis(2-chloropropane) [also known as bis(2-chloroisopropyl) ether].	611	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00.		
88. PCB-1016	608	625		6410 B [18th, 19th, 20th].	6410 B–00		Note 3, p. 43.
89. PCB-1221	608	625		6410 B [18th, 19th, 20th].	6410 B–00		Note 3, p. 43.
90. PCB-1232	608	625		6410 B [18th, 19th, 20th].	6410 B–00		Note 3, p. 43.
91. PCB-1242	608	625		6410 B [18th, 19th, 20th].	6410 B–00		Note 3, p. 43.
92. PCB-1248	608	625.					
93. PCB-1254	608	625		6410 B [18th, 19th, 20th].	6410 B–00		Note 3, p. 43.
94. PCB-1260	608	625		6410 B, 6630 B [18th, 19th, 20th].	6410 B–00		Note 3, p. 43.
95. 1,2,3,7,8-Pentachlorodibenzofuran.		1613B[10].					
96. 2,3,4,7,8-Pentachlorodibenzofuran.		1613B[10].					
97. 1,2,3,7,8,-Pentachlorodibenzo-*p*-dioxin.		1613B[10].					
98. Pentachlorophenol	604	625, 1625B		6410 B, 6630 B [18th, 19th, 20].	6410 B–00		Note 3, p. 140; Note 9, p. 27.
99. Phenanthrene	610	625, 1625B	610	6410 B 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92 (99)	Note 9, p. 27.
100. Phenol	604	625, 1625B		6420 B, 6410 B [18th, 19th, 20th].	6410 B–00, 6420 B–00		Note 9, p. 27.
101. Pyrene	610	625, 1625B	610	6440 B, 6410 B [18th, 19th, 20th].	6410 B–00	D4657–92(99)	Note 9, p. 27.
102. 2,3,7,8-Tetrachlorodibenzofuran.		1613B[10].					
103. 2,3,7,8-Tetrachlorodibenzo-*p*-dioxin.		613, 625,[5a] 1613B[10].					
104. 1,1,2,2-Tetrachloroethane.	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97		Note 3, p. 130
105. Tetrachloroethene	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97		Note 3, p. 130
106. Toluene	602	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th].	6200 B and C–97.		
107. 1,2,4-Trichlorobenzene.	612	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		Note 3, p. 130; Note 9, p.27

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number,[2 7]			Other Approved Methods			
	GC	GC/MS	HPLC	Standard methods [edition(s)]	Standard methods on-line	ASTM	Other
108. 1,1,1-Trichloroethane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97.		
109. 1,1,2-Trichloroethane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97		Note 3, p. 130
110. Trichloroethene	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97.		
111. Trichlorofluoromethane.	601	624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97		
112. 2,4,6-Trichlorophenol	604	625, 1625 B		6420 B, 6410 B [18th, 19th, 20th].	6410 B–00, 6420 B–00.		Note 9, p. 27
113. Vinyl chloride	601	624, 1624 B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200B and C–97		

Table IC notes

[1] All parameters are expressed in micrograms per liter (µg/L) except for Method 1613B in which the parameters are expressed in picograms per liter (pg/L).

[2] The full text of Methods 601–613, 624, 625, 1624B, and 1625B, are given at Appendix A, "Test Procedures for Analysis of Organic Pollutants," of this part 136. The full text of Method 1613B is incorporated by reference into this part 136 and is available from the National Technical Information Services as stock number PB95–104774. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, "Definition and Procedure for the Determination of the Method Detection Limit," of this part 136.

[3] "Methods for Benzidine: Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater," U.S. Environmental Protection Agency, September, 1978.

[4] Method 624 may be extended to screen samples for Acrolein and Acrylonitrile. However, when they are known to be present, the preferred method for these two compounds is Method 603 or Method 1624B.

[5] Method 625 may be extended to include benzidine, hexachlorocyclopentadiene, N-nitrosodimethylamine, and N-nitrosodiphenylamine. However, when they are known to be present, Methods 605, 607, and 612, or Method 1625B, are preferred methods for these compounds.

[5a] 625, Screening only.

[6] "Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency," Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[7] Each Analyst must make an initial, one-time demonstration of their ability to generate acceptable precision and accuracy with Methods 601–603, 624, 625, 1624B, and 1625B (See Appendix A of this part 136) in accordance with procedures each in Section 8.2 of each of these Methods. Additionally, each laboratory, on an ongoing basis must spike and analyze 10% (5% for Methods 624 and 625 and 100% for methods 1624B and 1625B) of all samples to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these Methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect. The results should be reported, but cannot be used to demonstrate regulatory compliance. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other Methods cited.

[8] "Organochlorine Pesticides and PCBs in Wastewater Using Empore TM Disk" 3M Corporation Revised 10/28/94.

[9] USGS Method 0–3116–87 from "Methods of Analysis by U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments" U.S. Geological Survey, Open File Report 93–125.

[10] Analysts may use Fluid Management Systems, Inc. PowerPrep system in place of manual cleanup provided that analysts meet the requirements of Method 1613B (as specified in Section 9 of the method) and permitting authorities.

TABLE 1D.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]

Parameter	Method	EPA [2,7]	Standard methods 18th, 19th, 20th Ed.	Standard methods on-line	ASTM	Other
1. Aldrin	GC	608	6630 B & C		D3086–90, D5812–96(02)	Note 3, p 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B	6410 B–00		
2. Ametryn	GC					Note 3, p. 83; Note 6, p. S68.
3. Aminocarb	TLC					Note 3, p. 94; Note 6, p. S16.
4. Atraton	GC					Note 3, p. 83; Note 6, p. S68.
5. Atrazine	GC					Note 3, p. 83; Note 6, p. S68; Note 9.
6. Azinphos methyl	GC					Note 3, p. 25; Note 6, p. S51.
7. Barban	TLC					Note 3, p. 104; Note 6, p. S64.
8. α-BHC	GC	608	6630 B & C		D3086–90, D5812–96(02)	Note 3, p. 7; Note 8.
	GC/MS	[5]625	6410 B			
9. β-BHC	GC	608	6630 C		D3086–90, D5812–96(02)	Note 8.
	GC/MS	[5]625	6410 B	6410 B–00		
10. δ-BHC	GC	608	6630 C		D3086–90, D5812–96(02)	Note 8.
	GC/MS	[5]625	6410 B	6410 B–00		
11. γ-BHC (Lindane)	GC	608	6630 B & C		D3086–90, D5812–96(02)	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B	6410 B–00		

TABLE 1D.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]—Continued

Parameter	Method	EPA [2 7]	Standard methods 18th, 19th, 20th Ed.	Standard methods on-line	ASTM	Other
12. Captan	GC		6630 B		D3086–90, D5812–96(02)	Note 3, p. 7.
13. Carbaryl	TLC					Note 3, p. 94, Note 6, p. S60.
14. Carbo-phenothion	GC					Note 4, p. 27; Note 6, p. S73.
15. Chlordane	GC	608	6630 B & C		D3086–90, D5812–96(02)	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B	6410 B–00		
16. Chloro-propham	TLC					Note 3, p. 104; Note 6, p. S64.
17. 2,4-D	GC		6640 B			Note 3, p. 115; Note 4, p. 40.
18. 4,4,-DDD	GC	608	6630 B & C		D3086–90, D5812–96(02)	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B	6410 B–00		
19. 4,4,-DDE	GC	608	6630 B & C		D3086–90, D5812–96(02)	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B	6410 B–00		
20. 4,4,-DDT	GC	608	6630 B & C		D3086–90, D5812–96(02)	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B	6410 B–00		
21. Demeton-O	GC					Note 3, p. 25; Note 6, p. S51.
22. Demeton-S	GC					Note 3, p. 25; Note 6, p. S51.
23. Diazinon	GC					Note 3, p. 25; Note 4, p. 27; Note 6, p. S51.
24. Dicamba	GC					Note 3, p. 115.
25. Dichlofenthion	GC					Note 4, p. 27; Note 6, p. S73.
26. Dichloran	GC		6630 B & C			Note 3, p. 7.
27. Dicofol	GC				D3086–90, D5812–96(02)	
28. Dieldrin	GC	608	6630 B & C			Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B	6410 B–00		
29. Dioxathion	GC					Note 4, p. 27; Note 6, p. S73.
30. Disulfoton	GC					Note 3, p. 25; Note 6 p. S51.
31. Diuron	TLC					Note 3, p. 104; Note 6, p. S64.
32. Endosulfan I	GC	608	6630 B & C		D3086–90, D5812–96(02)	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	[5] 625	6410 B	6410 B–00		
33. Endosulfan II	GC	608	6630 B & C		D3086–90, D5812–96(02)	Note 3, p. 7; Note 8.
	GC/MS	[5] 625	6410 B	6410 B–00		
34. Endosulfan Sulfate	GC	608	6630 C			Note 8.
	GC/MS	625	6410 B	6410 B–00		
35. Endrin	GC	608	6630 B & C		D3086–90, D5812–96(02)	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	[5] 625	6410 B	6410 B–00		
36. Endrin aldehyde	GC	608				Note 8.
	GC/MS	625				
37. Ethion	GC					Note 4, p. 27; Note 6, p. S73.
38. Fenuron	TLC					Note 3, p. 104; Note 6, p. S64.
39. Fenuron-TCA	TLC					Note 3, p. 104; Note 6, p. S64.
40. Heptachlor	GC	608	6630 B & C		D3086–90, D5812–96(02)	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B	6410 B–00		
41. Heptachlor epoxide	GC	608	6630 B & C		D3086–90, D5812–96(02)	Note 3, p. 7; Note 4, p. 27; Note 6, p. S73; Note 8.
	GC/MS	625	6410 B	6410 B–00		
42. Isodrin	GC					Note 4, p. 27; Note 6, p. S73.
43. Linuron	GC					Note 3, p. 104; Note 6, p. S64.
44. Malathion	GC		6630 C			Note 3. p. 25; Note 4, p. 27; Note 6, p. S51.
45. Methiocarb	TLC					Note 3, p. 94; Note 6, p. S60.
46. Methoxychlor	GC		6630 B & C		D3086–90, D5812–96(02)	Note 3, p. 7; Note 4, p. 27; Note 8.
47. Mexacarbate	TLC					Note 3, p. 94; Note 6, p. S60.
48. Mirex	GC		6630 B & C			Note 3, p. 7; Note 4, p. 27.
49. Monuron	TLC					Note 3, p. 104; Note 6, p. S64.
50. Monuron-TCA	TLC					Note 3, p. 104; Note 6, p. S64.
51. Nuburon	TLC					Note 3, p. 104; Note 6, p. S64.
52. Parathion methyl	GC		6630 C			Note 3, p. 25; Note 4, p. 27.
53. Parathion ethyl	GC		6630 C			Note 3, p. 25; Note 4, p. 27.
54. PCNB	GC		6630 B & C			Note 3, p. 7.
55. Perthane	GC				D3086–90, D5812–96(02)	Note 4, p. 27.
56. Prometron	GC					Note 3, p. 83; Note 6, p. S68; Note 9.
57. Prometryn	GC					Note 3, p. 83; Note 6, p. S68; Note 9.
58. Propazine	GC					Note 3, p. 83; Note 6, p. S68; Note 9.
59. Propham	TLC					Note 3, p. 104; Note 6, p. S64.
60. Propoxur	TLC					Note 3, p. 94; Note 6, p. S60.
61. Secbumeton	TLC					Note 3, p. 83; Note 6, p. S68.
62. Siduron	TLC					Note 3, p. 104; Note 6, p. S64.
63. Simazine	GC					Note 3, p. 83; Note 6, p. S68; Note 9.
64. Strobane	GC		6630 B & C			Note 3, p. 7.
65. Swep	TLC					Note 3, p. 104; Note 6, p. S64.

TABLE 1D.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]—Continued

Parameter	Method	EPA [2,7]	Standard methods 18th, 19th, 20th Ed.	Standard methods on-line	ASTM	Other
66. 2,4,5-T	GC		6640 B			Note 3, p. 115; Note 4, p. 40.
67. 2,4,5-TP (Silvex)	GC		6640 B			Note 3, p. 115; Note 4, p. 40.
68. Terbuthylazine GC						Note 3, p. 83; Note 6, p. S68.
69. Toxaphene	GC	608	6630 B & C		D3086–90, D5812–96(02)	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B	6410 B–00		
70. Trifluralin	GC		6630 B			Note 3, p. 7; Note 9.

Table ID notes:

[1] Pesticides are listed in this table by common name for the convenience of the reader. Additional pesticides may be found under Table 1C, where entries are listed by chemical name.

[2] The full text of Methods 608 and 625 are given at Appendix A, "Test Procedures for Analysis of Organic Pollutants," of this part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, "Definition and Procedure for the Determination of the Method Detection Limit," of this part 136.

[3] "Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater," U.S. Environmental Protection Agency, September 1978. This EPA publication includes thin-layer chromatography (TLC) methods.

[4] "Methods for Analysis of Organic Substances in Water and Fluvial Sediments," Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A3 (1987).

[5] The method may be extended to include α-BHC, γ-BHC, endosulfan I, endosulfan II, and endrin. However, when they are known to exist, Method 608 is the preferred method.

[6] "Selected Analytical Methods Approved and Cited by the U.S. Environmental Protection Agency." Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[7] Each analyst must make an initial, one-time, demonstration of their ability to generate acceptable precision and accuracy with Methods 608 and 625 (See Appendix A of this part 136) in accordance with procedures given in Section 8.2 of each of these methods. Additionally, each laboratory, on an on-going basis, must spike and analyze 10% of all samples analyzed with Method 608 or 5% of all samples analyzed with Method 625 to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect. The results should be reported, but cannot be used to demonstrate regulatory compliance. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other Methods cited.

[8] "Organochlorine Pesticides and PCBs in Wastewater Using Empore™ Disk", 3M Corporation, Revised 10/28/94.

[9] USGS Method 0–3106–93 from "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Triazine and Other Nitrogen-containing Compounds by Gas Chromatography with Nitrogen Phosphorus Detectors" U.S. Geological Survey Open File Report 94–37.

TABLE 1E.—LIST OF APPROVED RADIOLOGIC TEST PROCEDURES

Parameter and units	Method	Reference (method number or page)				
		EPA [1]	Standard methods 18th, 19th, 20th ed.	Standard methods on-line	ASTM	USGS [2]
1. Alpha-Total, pCi per liter	Proportional or scintillation counter.	900.0	7110 B	7110 B–00	D1943–90, 96.	pp. 75 and 78 [3].
2. Alpha-Counting error, pCi per liter	Proportional or scintillation counter.	Appendix B	7110 B	7110 B–00	D1943–90, 96.	p. 79.
3. Beta-Total, pCi per liter	Proportional counter	900.0	7110 B	7110 B–00	D1890–90, 96.	pp. 75 and 78 [3].
4. Beta-Counting error, pCi	Proportional counter	Appendix B	7110 B	7110 B–00	D1890–90, 96.	p. 79.
5. (a) Radium Total pCi per liter	Proportional counter	903.0	7500Ra B	7500–Ra B–01.	D2460–90, 97.	
(b) Ra, pCi per liter	Scintillation counter	903.1	7500RaC	7500–RA C–01.	D3454–91, 97.	p. 81.

Table 1E notes:

[1] "Prescribed Procedures for Measurement of Radioactivity in Drinking Water," EPA–600/4–80–032 (1980), U.S. Environmental Protection Agency, August 1980.

[2] Fishman, M.J. and Brown, Eugene, "Selected Methods of the U.S. Geological Survey of Analysis of Wastewaters," U.S. Geological Survey, Open-File Report 76–177 (1976).

[3] The method found on p. 75 measures only the dissolved portion while the method on p. 78 measures only the suspended portion. Therefore, the two results must be added to obtain the "total".

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TABLE IG.—TEST METHODS FOR PESTICIDE ACTIVE INGREDIENTS (40 CFR PART 455)

EPA survey code	Pesticide name	CAS No.	EPA analytical method No.(s)
8	Triadimefon	43121–43–3	507/633/525.1/1656
12	Dichlorvos	00062–73–7	1657/507/622/525.1
16	2,4-D; 2,4-D Salts and Esters [2,4-Dichlorophenoxyacetic acid]	00094–75–7	1658/515.1/615/515.2/555
17	2,4-DB; 2,4-DB Salts and Esters [2,4-Dichlorophenoxybutyric acid]	00094–82–6	1658/515.1/615/515.2/555
22	Mevinphos	07786–34–7	1657/507/622/525.1
25	Cyanazine	21725–46–2	629/507
26	Propachlor	01918–16–7	1656/508/608.1/525.1
27	MCPA; MCPA Salts and Esters [2-Methyl-4-chlorophenoxyacetic acid].	00094–74–6	1658/615/555
30	Dichlorprop; Dichlorprop Salts and Esters [2-(2,4-Dichlorophenoxy) propionic acid].	00120–36–5	1658/515.1/615/515.2/555
31	MCPP; MCPP Salts and Esters [2-(2-Methyl-4-chlorophenoxy) propionic acid].	00093–65–2	1658/615/555
35	TCMTB [2-(Thiocyanomethylthio) benzothiazole]	21564–17–0	637
39	Pronamide	23950–58–5	525.1/507/633.1
41	Propanil	00709–98–8	632.1/1656
45	Metribuzin	21087–64–9	507/633/525.1/1656
52	Acephate	30560–19–1	1656/1657

TABLE IG.—TEST METHODS FOR PESTICIDE ACTIVE INGREDIENTS (40 CFR PART 455)—Continued

EPA survey code	Pesticide name	CAS No.	EPA analytical method No.(s)
53	Acifluorfen	50594–66–6	515.1/515.2/555
54	Alachlor	15972–60–8	505/507/645/525.1/1656
55	Aldicarb	00116–06–3	531.1
58	Ametryn	00834–12–8	507/619/525.1
60	Atrazine	01912–24–9	505/507/619/525.1/1656
62	Benomyl	17804–35–2	631
68	Bromacil; Bromacil Salts and Esters	00314–40–9	507/633/525.1/1656
69	Bromoxynil	01689–84–5	1625/1661
69	Bromoxynil octanoate	01689–99–2	1656
70	Butachlor	23184–66–9	507/645/525.1/1656
73	Captafol	02425–06–1	1656
75	Carbaryl [Sevin]	00063–25–2	531.1/632/553
76	Carbofuran	01563–66–2	531.1/632
80	Chloroneb	02675–77–6	1656/508/608.1/525.1
82	Chlorothalonil	01897–45–6	508/608.2/525.1/1656
84	Stirofos	00961–11–5	1657/507/622/525.1
86	Chlorpyrifos	02921–88–2	1657/508/622
90	Fenvalerate	51630–58–1	1660
103	Diazinon	00333–41–5	1657/507/614/622/525.1
107	Parathion methyl	00298–00–0	1657/614/622
110	DCPA [Dimethyl 2,3,5,6-tetrachloroterephthalate]	01861–32–1	508/608.2/525.1/515.1/515.2/1656
112	Dinoseb	00088–85–7	1658/515.1/615/515.2/555
113	Dioxathion	00078–34–2	1657/614.1
118	Nabonate [Disodium cyanodithioimidocarbonate]	00138–93–2	630.1
119	Diuron	00330–54–1	632/553
123	Endothall	00145–73–3	548/548.1
124	Endrin	00072–20–8	1656/505/508/608/617/525.1
125	Ethalfluralin	55283–68–6	[1] 1656/[1] 627
126	Ethion	00563–12–2	1657/614/614.1
127	Ethoprop	13194–48–4	1657/507/622/525.1
132	Fenarimol	60168–88–9	507/633.1/525.1/1656
133	Fenthion	00055–38–9	1657/622
138	Glyphosate [N-(Phossphonomethyl) glycine]	01071–83–6	547
140	Heptachlor	00076–44–8	1656/505/508/608/617/525.1
144	Isopropalin	33820–53–0	1656/627
148	Linuron	00330–55–2	553/632
150	Malathion	00121–75–5	1657/614
154	Methamidophos	10265–92–6	1657
156	Methomyl	16752–77–5	531.1/632
158	Methoxychlor	00072–43–5	1656/505/508/608.2/617/525.1
172	Nabam	00142–59–6	630/630.1
173	Naled	00300–76–5	1657/622
175	Norflurazon	27314–13–2	507/645/525.1/1656
178	Benfluralin	01861–40–1	[1] 1656/[1] 627
182	Fensulfothion	00115–90–2	1657/622
183	Disulfoton	00298–04–4	1657/507/614/622/525.1
185	Phosmet	00732–11–6	1657/622.1
186	Azinphos Methyl	00086–50–0	1657/614/622
192	Organo-tin pesticides	12379–54–3	Ind-01/200.7/200.9
197	Bolstar	35400–43–2	1657/622
203	Parathion	00056–38–2	1657/614
204	Pendimethalin	40487–42–1	1656
205	Pentachloronitrobenzene	00082–68–8	1656/608.1/617
206	Pentachlorophenol	00087–86–5	625/1625/515.2/555/515.1/525.1
208	Permethrin	52645–53–1	608.2/508/525.1/1656/1660
212	Phorate	00298–02–2	1657/622
218	Busan 85 [Potassium dimethyldithiocarbamate]	00128–03–0	630/630.1
219	Busan 40 [Potassium N-hydroxymethyl-N-methyldithiocarbamate]	51026–28–9	630/630.1
220	KN Methyl [Potassium N-methyldithiocarbamate]	00137–41–7	630/630.1
223	Prometon	01610–18–0	507/619/525.1
224	Prometryn	07287–19–6	507/619/525.1
226	Propazine	00139–40–2	507/619/525.1/1656
230	Pyrethrin I	00121–21–1	1660
232	Pyrethrin II	00121–29–9	1660
236	DEF [S,S,S-Tributyl phosphorotrithioate]	00078–48–8	1657
239	Simazine	00122–34–9	505/507/619/525.1/1656
241	Carbam-S [Sodium dimethyldithiocarbanate]	00128–04–1	630/630.1
243	Vapam [Sodium methyldithiocarbamate]	00137–42–8	630/630.1
252	Tebuthiuron	34014–18–1	507/525.1
254	Terbacil	05902–51–2	507/633/525.1/1656
255	Terbufos	13071–79–9	1657/507/614.1/525.1
256	Terbuthylazine	05915–41–3	619/1656
257	Terbutryn	00886–50–0	507/619/525.1
259	Dazomet	00533–74–4	630/630.1/1659
262	Toxaphene	08001–35–2	1656/505/508/608/617/525.1
263	Merphos [Tributyl phosphorotrithioate]	00150–50–5	1657/507/525.1/622
264	Trifluralin	01582–09–8	1656/508/617/627/525.1
268	Ziram [Zinc dimethyldithiocarbamate]	00137–30–4	630/630.1

[1] Monitor and report as total Trifluralin.

(b) * * *

REFERENCES, SOURCES, COSTS, AND TABLE CITATIONS:

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(6) American Public Health Association. 1992, 1995, and 1998. Standard Methods for the Examination of Water and Wastewater. 18th, 19th, and 20th Edition (respectively). Available from: American Public Health Association, 1015 15th Street, NW., Washington, DC 20005. Standard Methods On-Line are available through the Standard Methods Web site (*www.standardmethods.org*). Tables IA, IB, IC, ID, IE.

* * * * *

(10) ASTM International. Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02, 1994, 1996, 1999, Volume 11.02, 2000, and individual standards published after 2000. Available from: ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, or *www.astm.org*. Tables IA, IB, IC, ID, and IE.

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(17) AOAC—International. Official Methods of Analysis of AOAC—International, 16th Edition, (1995). Available from: AOAC—International, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877. Table 1B, Note 3.

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(63) Waters Corporation. Method D6508, Rev. 2, "Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion Electrophoresis and Chromate Electrolyte," available from Waters Corp, 34 Maple St., Milford, MA 01757, 508/482–2131 (Office), 508/482–3625 (FAX). Table IB, Note 54.

(64) Kelada–01, "Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, and Thiocyanate," EPA 821–B–01–009 is available from National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 [Order Number PB 2001–108275]. Phone: 800–553–6847. Table IB, Note 55.

(65) QuikChem Method 10–204–00–1–X, "Digestion and Distillation of Total Cyanide in Drinking and Wastewaters Using MICRO DIST and Determination of Cyanide by Flow Injection Analysis" is available from Lachat Instruments, 6645 W. Mill Rd., Milwaukee, WI 53218, USA. Phone: 414–358–4200. Table IB, Note 56.

(66) "Methods for the Determination of Metals in Environmental Samples," Supplement I, National Exposure Risk Laboratory—Cincinnati (NERL–CI), EPA/600/R–94/11, May 1994; and "Methods for the Determination of Inorganic Substances in Environmental Samples," NERL–CI, EPA/600/R–93/100, August 1993 are available from National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. Phone: 800–553–6847. Table IB.

(67) "Determination of Inorganic Ions in Drinking Water by Ion Chromatography," Rev. 1.0, 1997 is available from from *http://www.epa.gov/safetwater/methods/met300.pdf*. Table IB.

(68) Table IG Methods are available in "Methods for the Determination of Nonconventional Pesticides in Municipal and Industrial Wastewater, Volume I," EPA 821–R–93–010A (August 1993, Revision I) and "Methods for the Determination of Nonconventional Pesticides in Municipal and Industrial Wastewater, Volume I," EPA 821–R–93–010B (August 1993) are available from National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. Phone: 800–553–6847. Table IB.

(69) "Mercury in Water by Cold Vapor Atomic Fluorescence Spectrometry" [December 2003]. Available at *http://www.epa.gov/waterscience/methods/*.

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(c) Under certain circumstances, the Regional Administrator or the Director in the Region or State where the discharge will occur may determine for a particular discharge that additional parameters or pollutants must be reported. Under such circumstances, additional test procedures for analysis of pollutants may be specified by the Regional Administrator, or the Director upon recommendation of the Alternate Test Procedure Program Coordinator, Washington, DC.

(d) Under certain circumstances, the Administrator may approve, upon recommendation by the Alternate Test Procedure Program Coordinator, Washington, DC, additional alternate test procedures for nationwide use.

(e) Sample preservation procedures, container materials, and maximum allowable holding times for parameters are cited in Tables IA, IB, IC, ID, IE, IF, and IG are prescribed in Table II. Information in the table takes precedence over information in specific methods or elsewhere. Any person may apply for a variance from the prescribed preservation techniques, container materials, and maximum holding times applicable to samples taken from a specific discharge. Applications for variances may be made by letters to the Regional Administrator in the Region in which the discharge will occur. Sufficient data should be provided to assure such variance does not adversely affect the integrity of the sample. Such data will be forwarded by the Regional Administrator to the Alternate Test Procedure Program Coordinator, Washington, DC, for technical review and recommendations for action on the variance application. Upon receipt of the recommendations from the Alternate Test Procedure Program Coordinator, the Regional Administrator may grant a variance applicable to the specific discharge to the applicant. A decision to approve or deny a variance will be made within 90 days of receipt of the application by the Regional Administrator.?≤

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

Parameter no./name	Container[1]	Preservation[2 3 17]	Maximum holding time[4 17]
Table IA—Bacteria Tests:			
1–5 Coliform, total, fecal, and E. coli.	PA,G	Cool, ≤6.00 °C [18], 0.008% $Na_2S_2O_3$[5]	6 hours.
6 Fecal streptococci	PA,G	Cool, ≤6.00 °C [18], 0.008% $Na_2S_2O_3$[5]	do.
7 enterococci	PA,G	Cool, ≤6.00 °C [18], 0.008% $Na_2S_2O_3$[5]	do.
Table IA—Protozoa Tests:			
8 Cryptosporidium	LDPE	≤6.00 °C [18]	96 hours.

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES—Continued

Parameter no./name	Container[1]	Preservation[2, 3, 17]	Maximum holding time[4, 17]
9 Giardia	LDPE	≤6.00 °C[18]	96 hours.
Table IA—Aquatic Toxicity Tests:			
6–10 Toxicity, acute and chronic	P,G	Cool, ≤6.00 °C \16 18\	36 hours.
Table IB—Inorganic Tests:			
1. Acidity	P,G	Cool, ≤6.00 °C[18]	14 days.
2. Alkalinity	P,G	do	do.
4. Ammonia	P,G	Cool, ≤6.00 °C[18], H_2SO_4 to pH<2	28 days.
9. Biochemical oxygen demand	P,G	Cool, ≤6.00 °C[18]	48 hours.
10. Boron	P or Quartz	HNO_3 to pH<2	6 months.
11. Bromide	P,G	none required	28 days.
14. Biochemical oxygen demand, carbonaceous.	P,G	Cool, ≤6.00 °C[18]	48 hours.
15. Chemical oxygen demand	P,G	Cool, ≤6.00 °C[18], H_2SO_4 to pH<2	28 days.
16. Chloride	P,G	none required	do.
17. Chlorine, total residual	P,G	do	Analyze within 15 minutes.
21. Color	P,G	Cool, ≤6.00 °C[18]	48 hours.
23–24. Cyanide, total and available (or CATC).	P,G	Cool, ≤6.00 °C[18], NaOH to pH<12, reducing agent[5]	14 days[6].
25. Fluoride	P	None required	28 days.
27. Hardness	P,G	HNO_3 to pH<2, H_2SO_4 to pH<2	6 months.
28. Hydrogen ion (pH)	P,G	None required	Analyze within 15 minutes.
31, 43. Kjeldahl and organic N	P,G	Cool, ≤6.00 °C[18], H_2SO_4 to pH<2	28 days.
Metals[7]			
18. Chromium VI[7]	P,G	Cool, ≤6.00 °C[18], pH = 9.3–9.7[21]	do.
35. Mercury (CVAA)	P,G	HNO_3 to pH<2	do.
35. Mercury (CVAFS)[17]	FP, G; and FP-lined cap[17].	5 mL/L 12N HCl or 5 mL/L BrCl[17]	28 days[17].
3, 5–8, 12, 13, 19, 20, 22, 26, 29, 30, 32–34, 36, 37, 45, 47, 51, 52, 58–60, 62, 63, 70–72, 74, 75. Metals, except boron, chromium VI and mercury[7].	P,G	HNO_3 to pH<2 at least 24 hours prior to analysis.[20]	6 months.
38. Nitrate	P,G	Cool, ≤6.00 °C[18]	48 hours.
39. Nitrate-nitrite	P,G	Cool, ≤6.00 °C[18], H_2SO_4 to pH<2	28 days.
40. Nitrite	P,G	Cool, ≤6.00 °C[18]	48 hours.
41. Oil and grease	G	Cool to ≤6.00 °C[18], HCl or H_2SO_4 to pH<2	28 days.
42. Organic Carbon	P,G	Cool to ≤6.00 °C[18], HCl or H_2SO_4 or H_3PO_4, to pH<2	do.
44. Orthophosphate	P,G	Filter within 15 minutes of collection, Cool, ≤6.00 °C[18]	48 hours.
46. Oxygen, Dissolved Probe	G Bottle and top	None required	Analyze within 15 minutes.
47. Winkler	do	Fix on site and store in dark	8 hours.
48. Phenols	G only	Cool, ≤6.00 °C[18], H_2SO_4 to pH<2	28 days.
49. Phosphorous (elemental)	G	Cool, ≤6.00 °C[18]	48 hours.
50. Phosphorous, total	P,G	Cool, ≤6.00 °C[18], H_2SO_4 to pH<2	28 days.
53. Residue, total	P,G	Cool, ≤6.00 °C[18]	7 days.
54. Residue, Filterable	P,G	do	do.
55. Residue, Nonfilterable (TSS)	P,G	do	do.
56. Residue, Settleable	P,G	do	48 hours.
57. Residue, Volatile	P,G	do	7 days.
61. Silica	P or Quartz	Cool, ≤6.00 °C[18]	28 days.
64. Specific conductance	P,G	do	do.
65. Sulfate	P,G	do	do.
66. Sulfide	P,G	Cool, ≤6.00 °C[18] add zinc acetate plus sodium hydroxide to pH>9	7 days.
67. Sulfite	P,G	None required	Analyze within 15 minutes.
68. Surfactants	P,G	Cool, ≤6.00 °C[18]	48 hours.
69. Temperature	P,G	None required	Analyze.
73. Turbidity	P,G	Cool, ≤6.00 °C[18]	48 hours.
Table IC.—Organic Tests.[8]			
13, 18–20, 22, 24–28, 34–37, 39–43, 45–47, 56, 76, 104, 105, 108–111, 113. Purgeable Halocarbons.	G, Teflon-lined septum.	Cool, ≤6.00 °C[18], 0.008% $Na_2S_2O_3$[5]	14 days.
6,57, 106. Purgeable aromatic hydrocarbons.	do	Cool, ≤6.00 °C[18], 0.008% $Na_2S_2O_3$[5], HCl to pH 2[9]	do.
3,4, Acrolein and acrylonitrile	do	Cool, ≤6.00 °C[18], 0.008% $Na_2S_2O_3$[5], adjust pH to 4–5[10]	do.
23, 30, 44, 49, 53, 77, 80, 81, 98, 100, 112. Phenols[11].	G, Teflon-lined cap	Cool, ≤6.00 °C[18], 0.008% $Na_2S_2O_3$[5]	7 days until extraction, 40 days after extraction.
7, 38. Benzidines[11]	do	do	7 days until extraction.[13]
14, 17, 48, 50–52. Phthalate esters.[11].	do	Cool, ≤6.00 °C[18]	7 days until extraction, 40 days after extraction.
82–84. Nitrosamines[11, thnsp.14]	do	Cool, ≤6.00 °C[18], store in dark, 0.008% $Na_2S_2O_3$[5]	do.
88–94. PCBs[11]	do	Cool, ≤6.00 °C[18]	1 year.
54, 55, 75, 79. Nitroaromatics and isophorone[11].	do	Cool, ≤6.00 °C[18] store in dark, 0.008% $Na_2S_2O_3$[5]	do.

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES—Continued

Parameter no./name	Container[1]	Preservation[2, 3, 17]	Maximum holding time[4, 17]
1, 2, 5, 8–12, 32, 33, 58, 59, 74, 78, 99, 101. Polynuclear aromatic hydrocarbons[11].	do	do	do.
15, 16, 21, 31, 87. Haloethers[11]	do	Cool, ≤6.00 °C [16], 0.008% $Na_2S_2O_3$[5]	do.
29, 35–37, 63–65, 107. Chlorinated hydrocarbons.[11].	do	Cool, ≤6.00 °C [16]	do.
60–62, 66–72, 85, 86, 95–97, 102, 103. CDDs/CDFs.[11].			
Aqueous Samples: Field and Lab Preservation.	G	Cool, ≤6.00 °C [16], 0.008% $Na_2S_2O_3$[5], pH<9	1 year.
Solids & Mixed Phase Samples: Field Preservation.	do	Cool, ≤6.00 °C [16]	7 days.
Tissue Samples: Field Preservation.	do	Cool, ≤6.00 °C [16]	24 hours.
Solids, Mixed Phase, and Tissue Samples: Lab Preservation.	do	Freeze, ≤ −10 °C	1 year.
Table ID-Pesticides Tests:			
1–70. Pesticides.[11]	do	Cool, ≤6.00 °C [16], pH 5–9 [15]	do.
Table IE-Radiological Tests:			
1–5. Alpha, beta and radium	P,G	HNO_3 to pH<2	6 months.

[1] "P" is polyethylene or polytetrafluoroethylene (PTFE; Teflon), or other fluoropolymer, unless otherwise stated in this Table II. "FP" is fluoropolymer. "G" is glass. "PA" is any plastic that is made of a sterlizable material (polypropylene or other autoclavable plastic). LDPE is low density polyethylene.

[2] Except where noted in this Table II and the method for the parameter, preserve each grab sample within 15 minutes of collection. For a composite sample to be collected automatically over time (e.g., using a 24-hour composite sampler; see 40 CFR 122.21(g)(7) and 40 CFR part 403, Appendix E), refrigerate the sample at ≤6.00 °C during collection unless otherwise specified in this Table II or in the method(s). For a composite sample collected automatically over time to be split into separate aliquots for preservation and/or analysis, maintain the sample at ≤6.00 °C unless otherwise specified in this Table II or in the method(s), until collection, splitting, and preservation is completed. Add the preservative to the sample container prior to sample collection when the preservative will not compromise the integrity of a grab sample, a composite sample, or any of the aliquots split from a composite sample collected automatically over time; otherwise, preserve the sample or aliquots within 15 minutes of collection. If a composite measurement is required but a composite sample collected automatically over time would compromise sample integrity, individual grab samples must be collected at prescribed time intervals (e.g., 4 samples over the course of a day at 6-hr. intervals). Grab samples must be analyzed separately and the concentrations averaged. Alternatively, grab samples may be collected in the field and composited in the laboratory if the compositing procedure produces results equivalent to results produced by arithmetic averaging of the results of analysis of individual grab samples. For examples of laboratory compositing procedures, see EPA Method 1664A (oil and grease) and the procedures at 40 CFR 141.34(f)(14)(iv) and (v) (volatile organics).

[3] When any sample is to be shipped by common carrier or sent through the United States mails, it must comply with the Department of Transportation Hazardous Materials Regulations (49 CFR part 172). The person offering such material for transportation is responsible for ensuring such compliance. For the preservation requirements of Table II, the Office of Hazardous Materials, Materials Transportation Bureau, Department of Transportation has determined that the Hazardous Materials Regulations do not apply to the following materials: Hydrochloric acid (HCl) in water solutions at concentrations of 0.04% by weight or less (pH about 1.96 or greater); Nitric acid (HNO_3) in water solutions at concentrations of 0.15% by weight or less (pH about 1.62 or greater); Sulfuric acid (H_2SO_4) in water solutions at concentrations of 0.35% by weight or less (pH about 1.15 or greater); and Sodium hydroxide (NaOH) in water solutions at concentrations of 0.080% by weight or less (pH about 12.30 or less).

[4] Samples should be analyzed as soon as possible after collection. The times listed are the maximum times that samples may be held before the start of analysis and still be considered valid (e.g., samples analyzed for fecal coliforms may be held up to six hours prior to commencing analysis). Samples may be held for longer periods only if the permittee, or monitoring laboratory has data on file to show that for the specific types of samples under study, the analytes are stable for the longer time, *and* has received a variance from the Regional Administrator under §136.3(e). For a grab sample, the holding time begins at the time of collection for a composite sample collected automatically over time (e.g., using a 24-hour composite sample; see 40 CFR 122.21(g)(7) and 40 CFR part 403, Appendix E), the holding time begins at the time of the end of collection of the composite samples. Some samples may not be stable for the maximum time period given in the table. A permittee, or monitoring laboratory, is obligated to hold the sample for a shorter time if they know it is necessary to maintain sample stability. See §136.3(e) for details.

[5] Add ascorbic acid or sodium borohydride ($NaBH_4$) reagent if (and only if) oxidants (*e.g.*, chlorine) are present. Add enough reagent to reduce any oxidants that are present. Generally, 0.1 g/L $NaBH_4$ can reduce 50 mg/L of chlorine (see method "Kelada-01" for more information). Methods recommending ascorbic acid generally specify to increase ascorbic acid in 0.6 mg/L increments until oxidants are removed. After adding reagent, test the sample using KI paper or a chlorine/oxidant test method to make sure all chlorine/oxidant is removed. If chlorine/oxidant remains, add more reagent. Do not add excess reagent, however, because this may interfere with test results.

[6] Collect the sample in an amber glass bottle with PTFE-lined cap. Immediately after collection, preserve the sample using any or all of the following techniques, as necessary, followed by adjustment of the sample pH to ≥12 by addition of sodium hydroxide and refrigeration as specified:

(1) Sulfide: The maximum holding time for an untreated sample is 24 hours when sulfide is present. Optionally, the sample may be treated and the maximum holding time extended to 14 days. Generally, the laboratory should test the sample with lead acetate test paper to determine the presence or absence of sulfide ion. However, for cyanide methods using amperometric detection systems (*e.g.*, OIA–1677 for available cyanide), sulfide levels below those detectable with lead acetate paper (approximately 5 ppm) may produce a false positive signal for cyanide. If there is reason to suspect sulfide levels below the detectable level of lead acetate paper when using an amperometric method, test the sample using a more sensitive sulfide method to determine if the treatment (described below) is required. If sulfide ion is present, treat the sample immediately (within 15 minutes of collection) with sufficient solid lead carbonate to remove sulfide (as evidenced by a lead acetate test paper), and immediately filter into another sample bottle to remove precipitated lead sulfide. If sulfide ion is suspected to be present, but its presence is not detected by the lead acetate paper test, two samples must be collected. One is treated for the presence of sulfide and immediately filtered, while the second is not treated for sulfide. Analyze both samples and report the lower of the two results.

(2) Sulfide and particulate matter: If the sample contains sulfide and particulate matter that would be removed by filtration, filter the sample prior to treatment with lead carbonate to assure that cyanides associated with the particulate matter are included in the measurement. Save the particulate matter and treat the filtrate using the sulfide removal procedure above. Combine and homogenize the collected particulate and treated filtrate prior to shipment to the laboratory for analysis.

(3) Aldehydes: Treat samples known or suspected to contain formaldehyde, acetaldehyde, or other water soluble aldehydes with 20 mL of 3.5% ethylenediamine solution per liter of sample.

(4) Chlorine, hypochlorite, or other oxidants: Treat samples known or suspected to contain chlorine, hypochlorite, or other oxidants as directed in footnote 5. EPA Method 330.4 or 330.5 may be used for the measurement of residual chlorine.

[7] For dissolved metals, filter the sample within 15 minutes of collection and before adding preservatives.

[8] Guidance applies to samples to be analyzed by GC, LC, or GC/MS for specific compounds.

[9] Sample receiving no pH adjustment must be analyzed within seven days of sampling.

[10] The pH adjustment is not required if acrolein will not be measured. Samples for acrolein receiving no pH adjustment must be analyzed within 3 days of sampling.

[11] When the extractable analytes of concern fall within a single chemical category, the specified preservative and maximum holding times should be observed for optimum safeguard of sample integrity (*i.e.*, use all necessary preservatives and hold for the shortest time listed). When the analytes of concern fall within two or more chemical categories, the sample may be preserved by cooling to ≤6.00 °C, reducing residual chlorine with 0.008% sodium thiosulfate, storing in the dark, and adjusting the pH to 6–9; samples preserved in this manner may be held for seven days before extraction and for forty days after extraction. Exceptions to this optional preservation and holding time procedure are noted in footnote 5 (regarding the requirement for thiosulfate reduction), and footnotes 12, 13 (regarding the analysis of benzidine).

[12] If 1,2-diphenylhydrazine is likely to be present, adjust the pH of the sample to 4.0 ± 0.2 to prevent rearrangement to benzidine.

[13] Extracts may be stored up to 30 days at <0 °C.

[14] For the analysis of diphenylnitrosamine, add 0.008% $Na_2S_2O_3$ and adjust pH to 7–10 with NaOH within 24 hours of sampling.

[15] The pH adjustment may be performed upon receipt at the laboratory and may be omitted if the samples are extracted within 72 hours of collection. For the analysis of aldrin, add 0.008% $Na_2S_2O_3$.

[16] Sufficient ice should be placed with the samples in the shipping container to ensure that ice is still present when the samples arrive at the laboratory. However, even if ice is present when the samples arrive, it is necessary to immediately measure the temperature of the samples and confirm that the 6.00 °C temperature maximum has not been exceeded. In the isolated cases where it can be documented that this holding temperature cannot be met, the permittee can be given the option of on-site testing or can request a variance. The request for a variance should include supportive data which show that the toxicity of the effluent samples is not reduced because of the increased holding temperature.

[17] Samples collected for the determination of trace level mercury (100 ng/L) using EPA Method 1631 must be collected in tightly-capped fluoropolymer or glass bottles and preserved with BrCl or HCl solution within 48 hours of sample collection. The time to preservation may be extended to 28 days if a sample is oxidized in the sample bottle. Samples collected for dissolved trace level mercury should be filtered in the laboratory. However, if circumstances prevent overnight shipment, samples should be filtered in a designated clean area in the field in accordance with procedures given in Method 1669. Samples that have been collected for determination of total or dissolved trace level mercury must be analyzed within 90 days of sample collection.

[18] Samples must be preserved at ≤6.00 °C, and should not be frozen unless data demonstrating that sample freezing does not adversely impact sample analysis is maintained on file and accepted as valid by the permitting authority. Also, for the purposes of NPDES monitoring, the specification of "≤6.00 °C" is used in place of the "4 °C" and "< 4 °C" sample temperature requirements listed in some methods.

[19] "do" means ditto, or same as the entry immediately above this column.

[20] Samples can be collected and shipped without acid preservation. However, acid must be added at least 24 hours before analysis to dissolve any metals that adsorb to the container walls.

[21] To achieve the 28 day holding time, use sodium hydroxide and the ammonium sulfate buffer solution specified in EPA Method 218.6.

3. Section 136.4 is amended by revising the first sentence of paragraph (d) introductory text to read as follows:

§ 136.4 Application for alternate test procedures.

(d) An application for approval of an alternate test procedure for nationwide use may be made by letter in triplicate to the Alternate Test Procedure Program Coordinator, Office of Science and Technology (4303), Office of Water, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. * * *

4. Section 136.5 is amended:

a. In paragraph (b) by revising the second sentence.

b. By revising paragraph (c).

c. In paragraph (d) by revising the second and third sentences.

d. By revising paragraphs (e)(1) and (e)(2).

The revisions read as follows:

§ 136.5 Approval of alternate test procedures.

* * * * *

(b) * * * Where the Director recommends rejection of the application for scientific and technical reasons which he provides, the Regional Administrator shall deny the application and shall forward this decision to the Director of the State Permit Program and to the Alternate Test Procedure Program Coordinator, Washington, DC.

(c) Before approving any application for an alternate test procedure proposed by the responsible person or firm making the discharge, the Regional Administrator shall forward a copy of the application to the Alternate Test Procedure Program Coordinator, Washington, DC.

(d) * * * Prior to the expiration of such ninety day period, a recommendation providing the scientific and other technical basis for acceptance or rejection will be forwarded to the Regional Administrator by the Alternate Test Procedure Program Coordinator, Washington, DC. A copy of all approval and rejection notifications will be forwarded to the Alternate Test Procedure Program Coordinator, Washington, DC, for the purposes of national coordination.

(e) *Approval for nationwide use.* (1) As expeditiously as is practicable after receipt by the Alternate Test Procedure Program Coordinator, Washington, DC, of an application for an alternate test procedure for nationwide use, the Alternate Test Procedure Program Coordinator, Washington, DC, shall notify the applicant in writing whether the application is complete. If the application is incomplete, the applicant shall be informed of the information necessary to make the application complete.

(2) As expeditiously as is practicable after receipt of a complete package, the Alternate Test Procedure Program Coordinator shall perform any analysis necessary to determine whether the alternate test procedure satisfies the applicable requirements of this part, and the Alternate Test Procedure Program Coordinator shall recommend to the Administrator that he/she approve or reject the application and shall also notify the application of the recommendation.

* * * * *

5. Section 136.6 is added to part 136 to read as follows:

§ 136.6 Method modifications and analytical requirements.

(a) *Definitions.* As used in this section:

(1) *Analyst* means the person or laboratory using a test procedure (analytical method) in this part.

(2) *Chemistry of the method* means the reagents and reactions used in a test procedure that allow determination of the analyte(s) of interest in an environmental sample.

(3) *Determinative technique* means the way in which an analyte is identified and quantified (*e.g.*, colorimetery, mass spectrometry).

(4) *Equivalent performance* means that the modified method produces results that meet the QC acceptance criteria of the approved method at this part.

(5) *Method-defined analyte* means an analyte defined solely by the method used to determine the analyte. Such an analyte may be a physical parameter, a parameter that is not a specific chemical, or a parameter that may be comprised of a number of substances. Examples include temperature, oil and grease, total suspended solids, total phenolics, turbidity, chemical oxygen demand, and biochemical oxygen demand.

(6) *QC* means "quality control."

(b) *Method modifications.*—(1) *Allowable changes.* Except as set forth in paragraph (b)(3) of this section, an Analyst may modify a test procedure (analytical method) provided that the chemistry of the method or the determinative technique is not changed, and provided that the requirements of paragraph (b)(2) of this section are met.

(i) Potentially allowable modifications regardless of current method performance include changes between automated and manual discrete instrumentation; changes in the calibration range (provided that the modified range covers any relevant regulatory limit); changes in equipment such as using similar equipment from a vendor other than that mentioned in the method (*e.g.*, a purge-and-trap device from OIA rather than Tekmar), changes in equipment operating parameters such as changing the monitoring wavelength of a colorimeter or modifying the temperature program for a specific GC column; changes to chromatographic columns (treated in greater deal in paragraph (d) of this section); and increases in purge-and-trap sample volumes (provided specifications in paragraph (e) of this section are met). The changes are only allowed provided that all the requirements of paragraph (b)(2) of this section are met.

(ii) If the characteristics of a wastewater matrix prevent efficient recovery of organic pollutants and prevent the method from meeting QC requirements, the Analyst may attempt to resolve the issue by using salts as specified in *Guidance on Evaluation, Resolution, and Documentation of Analytical Problems Associated with Compliance Monitoring* (EPA 821–B–93–001, June 1993), provided that such salts do not react with or introduce the target pollutant into the sample (as evidenced by the analysis of method blanks, laboratory control samples, and spiked samples that also contain such salts) and that all requirements of paragraph (b)(2) of this section are met. Chlorinated samples must be dechlorinated prior to the addition of such salts.

(iii) If the characteristics of a wastewater matrix result in poor sample dispersion or reagent deposition on equipment and prevents the Analyst from meeting QC requirements, the Analysts may attempt to resolve the issue by adding an inert surfactant (*i.e.* a surfactant that will not affect the Chemistry of the Method), which may include Brij–35 or sodium dodecyl sulfate (SDS), provided that such surfactant does not react with or introduce the target pollutant into the sample (as evidenced by the analysis of method blanks, laboratory control samples, and spiked samples that also contain such surfactant) and that all requirements of paragraph (b)(2) of this section are met. Chlorinated samples must be dechlorinated prior to the addition of such surfactant.

(2) *Requirements.* A modified method must produce Equivalent Performance for the analyte(s) of interest, and the Equivalent Performance must be documented.

(i) *Requirements for Establishing Performance.*

(A) If the approved method contains QC tests and QC acceptance criteria, the QC tests must be used with the modified method and the QC acceptance criteria must be met. The Analyst may only rely on QC tests and QC acceptance criteria in a method if it includes wastewater matrix QC tests and QC acceptance criteria (*i.e.*, as matrix spikes) and both initial (start-up) and ongoing QC tests and QC acceptance criteria.

(B) If the approved method does not contain QC tests and QC acceptance criteria, or if the QC tests and QC acceptance criteria in the method do not meet the requirements of paragraph (b)(2)(i)(A) of this section, the analyst must employ QC tests specified in *Protocol for EPA Approval of Alternate Test Procedures for Organic and Inorganic Analytes in Wastewater and Drinking Water* (EPA–821–B–98–002; March 1999) and meet the QC provisions specified therein. In addition, the Analyst must perform ongoing QC tests, including assessment of performance of the modified method on the sample matrix (*e.g.*, analysis of a matrix spike/matrix spike duplicate pair for every twenty samples of a discharge analyzed), and analysis of an ongoing precision and recovery sample and a blank with each batch of 20 or fewer samples.

(C) Calibration must be performed using the modified method and the modified method must be tested with every wastewater matrix to which it will be applied (up to nine distinct matrices; as described in the ATP Protocol, after validation in nine distinct matrices, the method may be applied to all wastewater matrices), in addition to any and all reagent water tests. If the performance in the wastewater matrix or reagent water does not meet the QC acceptance criteria the method modification may not be used.

(D) Analysts are obligated to test representative effluents. In addition, the non-modified approved method may be required to resolve any controversies.

(ii) *Requirements for documentation.* The modified method must be documented in a method write-up or an addendum that describes the modification(s) to the approved method. The write-up or addendum must include a reference number (*e.g.*, method number), revision number, and revision date so that it may be referenced accurately. In addition, the organization that uses the modified method must document the results of QC tests and keep these records, along with a copy of the method write-up or addendum, for review by an auditor.

(3) *Restrictions.* This paragraph does not apply to a method for a method-defined analyte or a change that would result in measurement of a different form or species of an analyte (*e.g.*, a change to a metals digestion or total cyanide distillation). This paragraph (b)(3) also does not apply to changes in sample preservation and/or holding time.

(c) *Analytical requirements for multi-analyte methods (target analytes).* For the purpose of NPDES reporting, the discharger or permittee must meet QC requirements only for the analyte(s) being measured and reported under the NPDES permit.

(d) *Capillary column.* Use of a capillary (open tubular) GC column with EPA Methods 601–613, 624, 625, and 1624B in appendix A to this part is allowed provided that all QC tests in the method are performed and all QC acceptance criteria are met. When changing from a packed column to a capillary column, the analyst must establish a new record of analyte retention times and keep these on file along with other startup test and ongoing QC data.

(e) *Increased sample volume in purge and trap methodology.* Increased sample volumes, up to a maximum of 25 mL, are allowed provided that the height of the water column in the purge vessel is at least 5 cm. The analyst should also use one or more surrogate analytes that are chemically similar to the analytes of interest in order to demonstrate that the increased sample volume does not adversely affect the analytical results.

6. Section 136.7 is added to part 136 to read as follows:

§ 136.7 Reporting.

(a) Demonstration of compliance with a permit must be based upon testing which meets QC requirements in this part, including QC requirements in the method used for the testing.

(b) Failure to meet the QC requirements in this part, including QC requirements in the approved method, does not relieve a discharger or permittee of timely reporting of test results.

(c) Results from tests must be reported to the level specified in the analytical method or permit, whichever is lower.

(d) Where a conflict is created between reporting requirements in this section and the reporting requirements in an analytical method listed in this part, reporting requirements in this section supersede reporting requirements in the analytical method.

Appendices C and D [Removed]

7. Appendices C and D to part 136 are removed.

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.21 is amended by adding a sentence to the end of footnote 1 to the Table in paragraph (f)(3) to read as follows:

§ 141.21 Coliform sampling.

* * * * *

(f) * * *

(3) * * *

[1] * * * In addition, the following on-line versions with the noted approval date may also be used: 2310 B–01, 9215 B–00, 9221 A, B, D–99, 9222 A, B, C–97, and 9223–97.

* * * * *

3. Section 141.23 is amended:

a. In paragraph (a)(4)(i) by revising the entries for "Cyanide," "Nitrate," and "Nitrite" in the table, and by adding a new footnote 9 to the table.

b. In paragraph (k)(1) by revising the table. The revisions and addition read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

* * * * *

(a) * * *

(4) * * *

(i) * * *

DETECTION LIMITS FOR INORGANIC CONTAMINANTS

Contaminant	MCL (mg/L)	Methodology	Detection Limit (mg/L)
*	*	* * * * *	
Cyanide	0.2	Distillation, Spectrophotometric[3]	0.02
		Distillation, Automated, Spectrophotometric[3]	0.005
		Distillation, Amenable, Spectrophotometric[4]	0.02
		Distillation, Selective Electrode[3]	0.05

DETECTION LIMITS FOR INORGANIC CONTAMINANTS—Continued

Contaminant	MCL (mg/L)	Methodology	Detection Limit (mg/L)
		UV, Distillation, Spectrophotometric[9]	0.0005
		Distillation, Spectrophotometric[3]	0.0006
		Ligand Exchange with Amperometry[4]	0.0005
	* *	* * * * * *	
Nitrate	10 (as N)	Manual Cadmium Reduction	0.01
		Automated Hydrazine Reduction	0.01
		Automated Cadmium Reduction	0.05
		Ion Selective Electrode	1
		Ion Chromatography	0.01
		Capillary Ion Electrophoresis	0.076
Nitrite	1 (as N)	Spectrophotometric	0.01
		Automated Cadmium Reduction	0.05
		Manual Cadmium Reduction	0.01
		Ion Chromatography	0.004
		Capillary Ion Electrophoresis	0.103
	* *	* * * * * *	

* * * * *

[3] Screening method for total cyanides.

[4] Measures "free" cyanides.

* * * * *

[9] Measures total cyanides when UV-digestor is used, and "free" cyanides when UV-digestor is bypassed.

* * * * *

(k) * * *

(l) * * *

Contaminant	Methodology[13]	EPA	ASTM[3]	SM[4] (18th, 19th ed.)	SM[4] (20th ed.)	SM on-line[22]	Other
1. Alkalinity	Titrimetric		D1067–92, 02 B	2320 B	2320 B	2320 B–97	
	Electrometric titration						I–030–85[5]
2. Antimony	Inductively Coupled Plasma (ICP)—Mass Spectrometry.	200.8[2].					
	Hydride-Atomic Absorption.		D3697–92				
	Atomic Absorption; Platform.	200.9[2]					
	Atomic Absorption; Furnace.			3113 B		3113 B–99	
3. Arsenic[14]	Inductively Coupled Plasma[15].	200.7[2]		3120 B	3120 B	3120 B–99	
	ICP-Mass Spectrometry	200.8[2]					
	Atomic Atomic Absorption; Platform.	200.9[2]					
	Atomic Absorption Furnace.		D2972–97, 03 C	3113 B		3113 B–99.	
	Hydride Atomic Absorption.		D2972–97, 03 B	3114 B		3114 B–97	
4. Asbestos	Transmission Electron Microscopy.	100.1[9]					
	Transmission Electron Microscopy.	100.2[10]					
5. Barium	Inductively Coupled Plasma.	200.7[2]		3120 B	3120 B	3120 B–99	
	ICP-Mass Spectrometry	200.8[2]					
	Atomic Absorption; Direct			3111 D		3111 D–99	
	Atomic Absorption; Furnace.			3113 B		3113 B–99	
6. Beryllium	inductively Coupled Plasma.	200.7[2]		3120 B	3120 B	3120 B–99	
	ICP-Mass Spectrometry	200.8[2]					
	Atomic Absorption; Platform.	200.9[2]					
	Atomic Absorption; Furnace.		D3645–97, 03 B	3113 B	3113 B–99		
7. Cadmium	Inductively Coupled Plasma.	200.7[2]					
	ICP-Mass Spectrometry	200.8[2].					
	Atomic Absorption; Platform.	200.9[2]					
	Atomic Absorption; Furnace.			3113 B		3113 B–99	
8. Calcium	EDTA titrimetric		D511–93, 03 A	3500–Ca D	3500–Ca B	3500–Ca B–97	
	Atomic Absorption; Direct Aspiration.		D511–93, 03 B	3111 B		3111 B–99	
	Inductively Coupled Plasma.	200.7[2]		3120 B	3120 B	3120 B–99	

Contaminant	Methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	SM on-line [22]	Other
	Ion Chromatography		D6919–03				
9. Chromium	Inductively Coupled Plasma.	200.7 [2]		3120 B	3120 B	3120 B–99	
	ICP-Mass Spectrometry	200.8 [2]					
	Atomic Absorption; Platform.	200.9 [2]					
	Atomic Absorption; Furnace.			3113 B		3113 B–99	
10. Copper	Atomic Absorption; Furnace.		D1688–95, 02 C	3113 B		3113 B–99	
	Atomic Absorption; Direct Aspiration.		D1688–95, 02 A	3111 B		3111 B–99	
	Inductively Coupled Plasma.	200.7 [2]		3120 B	3120 B	3120 B–99	
	ICP-Mass spectrometry	200.8 [2]					
	Atomic Absorption; Platform.	200.9 [2]					
11. Conductivity	Conductance	D1125–95 (99) A.	2510 B	2510 B	2510 B–97	.	
12. Cyanide	Manual Distillation followed by.		D2036–98A	4500–CN C	4500–CN–C		
	Spectro-photometric, Amenable.		D2036–98B	4500–CN G	4500–CN G	4500–CN G–99	
	Spectro-photometric Manual.		D2036–98A	4500–CN E	4500–CN E	4500–CN E99	I–3300–85 [5]
	Spectro-photometric Semi-automated.	335.4 [6]					
	Selective Electrode			4500–CN F	4500–CN F	4500–CN F–99	
	UV, Distillation, Spectrophotometric.						Kelada–01 [17]
	Distillation, Spectro-photometric.						QuikChem 10–204–00–1–X [18]
	Ligand Exchange [and Amperometry [21].		D6888–03				OIA–1677, DW [20]
13. Fluoride	Ion Chromatography	300.0 [6]	D4327–97, 03	4110 B	4110 B	4110 B–00	
	Manual Distill.; Color. SPADNS.			4500–F B, D	4500–F B, D	4500–F B, D–97.	
	Manual Electrode		D1179–93, 99 B	4500–F C	4500–F C	4500–F C–97	
	Automated Electrode						380–75WE [11]
	Automated Alizarin			4500–F E	4500–F E	4500–F E–97	129–71W [11]
	Capillary Ion Electrophoresis.						D6508, Rev. 2 [19]
14. Lead	Atomic Absorption Furnace.		D3559–96, 03 D	3113 B		3113 B–99	
	ICP-Mass spectrometry	200.8 [2]					
	Atomic Absorption; Platform.	200.9 [2]					
	Differential Pulse Anodic Stripping Voltametry.						Method 1001 [16]
15. Magnesium	Atomic Absorption		D511–93, 03 B	3111 B		3111 B–99	
	ICP	200.7 [2]		3120 B	3120 B	3120 B–99	
	Complexation Titrimetric Methods.		D511–93, 03 A	3500–Mg E	3500–Mg B	3500–Mg B–97	
	Ion Chromatography		D6919–03				
16. Mercury	Manual, Cold Vapor	245.1 [2]	D3223–97, 02	3112 B		3112 B–99.	
	Automated, Cold Vapor	245.2 [1]					
	ICP-Mass Spectrometry	200.8 [2]					
17. Nickel	Inductively Coupled Plasma.	200.7 [2]		3120 B	3120 B	3120 B–99	
	ICP-Mass Spectrometry	200.8 [2]					
	Atomic Absorption; Platform.	200.9 [2]					
	Atomic Absorption; Direct			3111 B		3111 B–99	
	Atomic Absorption; Furnace.			3113		3113 B–99	
18. Nitrate	Ion Chromatography	300.0 [6]	D4327–97, 03	4110 B	4110 B	4110 B–00	B–1011 [8]
	Automated Cadmium Reduction.	353.2 [6]	D3867–90 A	4500–NO_3 F	4500–No_3 F	4500–NO_3 F–00.	
	Ion Selective Electrode			4500–NO_3 D	4500–NO_3 D	4500–NO_3 D–00.	601 [7]
	Manual Cadmium Reduction.		D3867–90 B	4500–NO_3 E	4500–NO_3 E	4500–NO_3 E–00.	
	Capillary Ion Electrophoresis.						D6508, Rev. 2 [19]
19. Nitrite	Ion Chromatography	300.0 [6]	D4327–97	4110 B	4110 B	4110 B–00	B–1011 [8]
	Automated Cadmium Reduction.	353.2 [6]	D3867–90 A	4500–NO_3 F	4500–NO_3 F	4500–NO_3 F–00.	
	Manual Cadmium Reduction.		D3867–90 B	4500–NO_3 E	4500–NO_3 E	4500–NO_3 E–00.	
	Spectro-photometric			4500–NO_2 B	4500–NO_2 B	4500–NO_2 B–00.	

Contaminant	Methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	SM on-line [22]	Other
	Capillary Ion Electrophoresis.						D6508, Rev. 2 [19]
20. Ortho-phosphate [12].	Colorimetric, Automated, Ascorbic Acid.	365.1 [6]		4500–P F	4500–P F		
	Colorimetric, ascorbic acid, single reagent.		D515–88A	4500–P E	4500–P E		
	Colorimetric Phosphomolybdate;.						I–1601–85 [5]
	Automated-segmented Flow;.						I–2601–90 [5]
	Automated Discrete						I2598–85 [5]
	Ion Chromatography	300.0 [6]	D4327–97, 03	4110 B	4110 B	4110 B–00	
	Capillary Ion Electrophoresis.						D6508, Rev. 2 [19]
21. pH	Electrometric	150.1, 150.2 [1].	D1293–95, 99	4500–H+ B	4500–H+ B	4500–H+B–00	
22. Selenium	Hydride-Atomic Absorption.		D3859–98, 03 A	3114 B		3114 B–97	
	ICP-Mass Spectrometry	200.8 [2]					
	Atomic Absorption; Platform.	200.9 [2]					
	Atomic Absorption; Furnace.		D3859–98, 03 B	3113 B		3113 B–99	
23. Silica	Colorimetric, Molybdate Blue;.						I–1700–85 [5]
	Automated-segmented Flow.						I–2700–85 [5]
	Colorimetric		D859–95, 00				
	Molybdosilicate			4500–Si D	4500–SiO_2 C	4500–SiO_2 C–97.	
	Heteropoly blue			4500–Si E	4500–SiO_2 D	4500–SiO_2 D–97.	
	Automated for Molybdate-reactive Silica.			4500–Si F	4500–SiO_2 E	4500–SiO_2 E–97.	
	Inductively Coupled Plasma.	200.7 [2]		3120 B	3120 B	3120 B–99	
24. Sodium	Inductively Coupled Plasma.	200.7 [2]					
	Atomic Absorption; Direct Aspiration.			3111 B		3111 B–99	
	Ion Chromatography		D6919–03				
25. Temperature	Thermometric			2550	2550	2550–00	
26. Thallium	ICP-Mass Spectrometry	200.8 [2]					
	Atomic Absorption; Platform.	200.9 [2]					

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes 1–11, 16–20 and 22 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 1301 Constitution Avenue, NW., EPA West, Room B102, Washington, DC 20460 (Telephone: 202–566–2426); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20408.

[1] "Methods for Chemical Analysis of Water and Wastes," EPA/600/4–79/020, March 1983. Available at NTIS, PB84–128677.

[2] "Methods for the Determination of Metals in Environmental Samples—Supplement I," EPA/600/R–94/111, May 1994. Available at NTIS, PB95–125472.

[3] *Annual Book of ASTM Standards*, 1994, 1996, 1999, or 2003, Vols. 11.01 and 11.02, ASTM International; any year containing the cited version of the method may be used. The previous versions of D1688–95A, D1688–95C (copper), D3559–95D (lead), D1293–95 (pH), D1125–91A (conductivity) and D859–94 (silica) are also approved. These previous versions D1688–90A, C; D3559–90D, D1293–84, D1125–91A and D859–88, respectively are located in the Annual Book of ASTM Standards, 1994, Vol. 11.01. Copies may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] *Standard Methods for the Examination of Water and Wastewater*, 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005. The cited methods published in any of these three editions may be used, except that the versions of 3111 B, 3111 D, 3113 B and 3114 B in the 20th edition may not be used.

[5] Method I–2601–90, Methods for Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments, Open File Report 93–125, 1993; For Methods I–1030–85; I–1601–85; I–1700–85; I–2598–85; I–2700–85; and I–3300–85 See Techniques of Water Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A–1, 3rd ed.,1989; Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225–0425.

[6] "Methods for the Determination of Inorganic Substances in Environmental Samples." EPA/600/R–93/100, August 1993. Available at NTIS, PB94–120821. Available at NTIS, PB94–120821, 5285 Port Royal Road. Springfield, VA 22161. The toll free telephone number is 800–553–6847.

[7] The procedure shall be done in accordance with the Technical Bulletin 601 "Standard Method of Test for Nitrate in Drinking Water," July 1994, PN 221890–001, Analytical Technology, Inc. Copies may be obtained from ATI Orion, 529 Main Street, Boston, MA 02129.

[8] Method B–1011, "Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography," August 1987. Copies may be obtained from Waters Corporation, Technical Services Division, 34 Maple Street, Milford, MA 01757.

[9] Method 100.1, Analytical Method For Determination of Asbestos Fibers in Water," EPA/600/4–83/043, EPA, September 1983. Available at NTIS, PB83–260471.

[10] Method 100.2, "Determination of Asbestos Structure Over 10-um In Length In Drinking Water," EPA/600/R–94/134, June 1994. Available at NTIS, PB94–201902.

[11] Industrial Method No. 129–71W, "Fluoride in Water and Wastewater," December 1972, and Method No. 380–75WE, "Fluoride in Water and Wastewater," February 1976, Technicon Industrial Systems. Copies may be obtained from Bran & Luebbe, 1025 Busch Parkway, Buffalo Grove, IL 60089.

[12] Unfiltered, no digestion or hydrolysis.

[13] Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2X preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (*i.e.*, no sample digestion) will be higher. For direct analysis of cadmium and arsenic by Method 200.7, and arsenic by Method 3120 B sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Method 3113 B; and lead by Method D3559–90D unless multiple in-furnace depositions are made.

[14] If ultrasonic nebulization is used in the determination of arsenic by Methods 200.7, 200.8, or SM 3120 B, the arsenic must be in the penta-valent state to provide uniform signal response. For methods 200.7 and 3120 B, both samples and standards must be diluted in the same mixed acid matrix concentration of nitric and hydrochloric acid with the addition of 100 mL of 30% hydrogen peroxide per 100 mL of solution. For direct analysis of arsenic with method 200.8 using ultrasonic nebulization, samples and standards must contain one mg/L of sodium hypochlorite.

[15] After January 23, 2006 analytical methods using the ICP–AES technology, may not be used because the detection limits for these methods are 0.008 mg/L or higher. This restriction means that the two ICP–AES methods (EPA Method 200.7 and SM 3120 B) approved for use for the MCL of 0.05 mg/L may not be used for compliance determinations for the revised MCL of 0.01 mg/L. However, prior to 2005 systems may have compliance samples analyzed with these less sensitive methods.

[16] The description for Method Number 1001 for lead is available from Palintest, LTD, 21 Kenton Lands Road, P.O. Box 18395, Erlanger, KY 41018. Or from the Hach Company, P.O. Box 389, Loveland, CO 80539.

[17] The description for the Kelada-01 Method, "Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, And Thiocyanate," Revision 1.2, August 2001, EPA #821–B–01–009 for cyanide is available from the National Technical Information Service (NTIS), PB 2001–108275, 5285 Port Royal Road, Springfield, VA 22161.

[18] The description for the QuikChem Method 10–204–00–1–X, "Digestion and distillation of total cyanide in drinking and wastewaters using MICRO DIST and determination of cyanide by flow injection analysis," Revision 2.1, November 30, 2000 for cyanide is available from Lachat Instruments, 6645 W. Mill Rd., Milwaukee, WI 53218, USA. Phone: 414–358–4200.

[19] Method D6508, Rev. 2, "Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion Electrophoresis and Chromate Electrolyte," available from Waters Corp, 34 Maple St, Milford, MA, 01757, 508/482–2131 (Office), 508/482–3625 (FAX).

[20] Method OIA–1677, DW "Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry," January 2004. Available at NTIS, 5285 Port Royal Road, Springfield, VA 22161. The toll free telephone number is 800–553–6847.

[21] Sulfide levels below those detected using lead acetate paper may produce positive method interferences. Test samples using a more sensitive sulfide method to determine if a sulfide interference is present, and treat samples accordingly.
[22] Standard Methods On-line are available at *http://www.standardmethods.org.*

* * * * *

4. Section 141.24 is amended by revising the entries 23, 24, 26, 49, and 50 in the table in paragraph (e)(1) to read as follows:

§ 141.24 Organic chemicals, sampling and analytical requirements.

* * * * *

(e) * * *

(1) * * *

Contaminant	EPA method [1]	Standard methods	ASTM	Other
* * *	*	*	*	*
23. 2,4-D [4] (as acids, salts, and esters)	515.2, 555, 515.1, 515.3, 515.4		D5317–93, 98 (2003)	
24. 2,4,5-TP [4] (Silvex)	515.2, 555, 515.1, 515.3, 515.4		D5317–93, 98 (2003)	
* * *	*	*	*	*
26. Atrazine [2]	507, 525.2, 508.1, 505, 551.1			
* * *	*	*	*	*
49. Pentachlorophenol	515.2, 525.2, 555, 515.1, 515.3, 515.4		D5317–93, 98 (2003)	
50. Picloram [4]	515.2, 555, 515.1, 515.3, 515.4		D5317–93, 98 (2003)	
* * *	*	*	*	*

[1] For previously approved EPA methods which remain available for compliance monitoring until June 1, 2001, see paragraph (e)(2) of this section.
[2] Substitution of the detector specified in 505, 507, 508, 508.1 for the purpose of achieving lower detection limits is allowed as follows. Either an electron capture or nitrogen phosphorus detector may be used provided all regulatory requirements and quality control criteria are met.
* * * * *
[4] Each community and non-transient non-community water system shall take four consecutive quarterly samples for each contaminant listed in § 141.61(a)(2) through (21) during each compliance period, beginning in the initial compliance period.

5. Section 141.25 is amended by revising the table in paragraph (a) to read as follows.

§ 141.25 Analytical methods for radioactivity.

(a) * * *

Contaminant	Methodology	Reference (method of page number)								
		EPA [1]	EPA [2]	EPA [3]	EPA [4]	SM [5]	ASTM [6]	USGS [7]	DOE [8]	Other
Naturally Occurring:										
Gross alpha and beta. [11]	Evaporation	900.0	p 1	00–01	p 1	302, 7110 B, 7110 B–00		R–1120–76		
Gross alpha [11]	Co-precipitation			00–02			7110 C, 7110 C–00			
Radium 226	Radon Emanation	903.1	p 16	Ra–04	p 19	305, 7500–Ra C, 7500 Ra C–01	D3454–97	R–1141–76	Ra–04	NY [9]
	Radio-chemical	903.0	p 13	Ra–03		304, 7500–Ra B, 7500–Ra B–01	D2460–97	R–1140–76		GA. [13]
Radium 228	Radio-chemical	904.0	p 24	Ra–05	p 19	7500–Ra D, 7500–Ra D–01		R–1142–76		NY [9], NJ [10] GA [13]
Uranium [12]	Radio-chemical	908.0				7500–U B, 7500–U B–00				
	Fluorometric	908.1				7500–U C (17th Ed.)	2907–97	R–1180–76, R–1181–76	U–04	
	Alpha Spectrometry			00–07	p 33	7500–U C (18th, 19th, or 20th Ed.), 7500–U–C–00	D3972–97, 02	R–1182–76	U–02	
	Laser Phos-phorom-etry.						D5174–97, 02			
Man-Made:										

Contaminant	Methodology	Reference (method of page number)								
		EPA[1]	EPA[2]	EPA[3]	EPA[4]	SM[5]	ASTM[6]	USGS[7]	DOE[8]	Other
Radioactivecesium	Radio-chemical	901.0	p 4			7500–Cs B, 7500–Cs B–02	D2459–72	R–1111–76		
	Gamma ray spectrom-etry.	901.1			p 92	7120, 7120–97	D3649–91, 98a	R–1110–76	4.5.2.3	
Radioactive iodine	Radio-chemical	902.0	p 6			7500–I B, 7500–I B–00				
			p 9			7500–I C, 7500–I C–00				
						7500–I D, 7500–I D–00	3649–91, 98a			
	Gamma ray spectrom-etry.	901.1			p 92	7120, 7120–97	D4785–93, 00a		4.5.2.3	
Radioactive Strontium 89, 90	Radio-chemical	905.0	p 29	Sr–04	p 65	303, 7500–Sr B 7500–Sr B–01		R–1160–76	Sr–01, Sr–02	
Tritium	Liquid Scintillation	906.0	p 34	H–02	p 87	306, 7500–3H B, 7500–3H B–00	D4107–91, 98 (2002)	R–1171–76		
Gamma Emitters	Gamma Ray	901.1			p 92	7120, 7120–97	D3649–91, 98a	R–1110–76	Ga–01–R	
	Spectrometry	902.0				7500–Cs B, 7500–Cs B–02	D4785–93, 00a			
		901.0				7500–I B, 7500–I B–00				

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of documents 1 through 10 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, EPA West, 1301 Constitution Avenue, NW., Room B102 , Washington, DC 20460 (Telephone: 202–566–2426); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[1] "Prescribed Procedures for the Measurement of Radioactivity in Drinking Water." EPA 600/4–80–032, August 1980. Available at the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (Telephone 800–553–6847), PB 80–224744.

[2] "Interim Radiochemical Methodology for Drinking Water," EPA 600/4–75–008(revised), March 1976. Available NTIS, 5285 Port Royal Road, Springfield, VA 22161 (Telephone 800–553–6847), PB 253258.

[3] "Radiochemistry Procedures Manual," EPA 520/5–84–006, December, 1987. Available NTIS, 5285 Port Royal Road, Springfield, VA 22161 (Telephone 800–553–6847), PB 84–215581.

[4] "Radiochemical Analytical Procedures for Analysis of Environmental Samples," EMSL LV 053917, March 1979. Available at NTIS, 5285 Port Royal Road, Springfield, VA 22161 (Telephone 800–553–6847).

[5] "Standard Methods for the Examination of Water and Wastewater," 13th, 17th, 18th, 19th Editions, or 20th edition, 1971, 1989, 1992, 1995, 1998. Available at American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005 . Methods 302, 303, 304, 305 and 306 are only in the 13th edition. Methods 7110B, 7500–Ra B, 7500–Ra C, 7500–Ra D, 7500–U B, 7500–Cs B, 7500–I B, 7500–I C, 7500–I D, 7500–Sr B, 7500–3H B are in the 17th, 18th, 19th and 20th editions. Method 7110 C is in the 18th, 19th and 20th editions. Method 7500–U C Fluorometric Uranium is only in the 17th Edition, and 7500–U C Alpha spectrometry is only in the 18th, 19th and 20th editions. Method 7120 is only in the 19th and 20th editions. Methods 302, 303, 304, 305 and 306 are only in the 13th edition. Method 7110 B–00, 7110 C–00, 7500–Ra B–01, 7500–Ra C–01, 7500–Ra D–01, 7500–U B–00, 7500–U C–00, 7500–I B–00, 7500–I C–00, 7500–I D–00, 7120–97, 7500–Sr B–01, and 7500–3H B–00 are available on-line at *http://www.standardmethods.org*.

[6] *Annual Book of ASTM Standards*, Vol. 11.02, 2002 ; American Society for Testing and Materials; any year containing the cited version of the method may be used. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[7] "Methods for Determination of Radioactive Substances in Water and Fluvial Sediments," Chapter A5 in Book 5 of *Techniques of Water-Resources Investigations of the United States Geological Survey*, 1977. Available at U.S. Geological Survey (USGS) Information Services, Box 25286, Federal Center, Denver, CO 80225–0425.

[8] "EML Procedures Manual," 28th (1997) or 27th (1990) Editions, Volume 1; either edition may be used. In the 27th Edition Method Ra–04 is listed as Ra–05 and Method Ga–01–R is listed as Sect. 4.5.4.3. Available at the Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, NY 10014–3621.

[9] "Determination of Ra–226 and Ra–228 (Ra–02)," January 1980, Revised June 1982. Available at Radiological Sciences Institute for Laboratories and Research, New York State Department of Health, Empire State Plaza, Albany, NY 12201.

[10] "Determination of Radium 228 in Drinking Water," August 1980. Available at State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, NJ 08625.

[11] Natural uranium and thorium-230 are approved as gross alpha calibration standards for gross alpha with co-precipitation and evaporation methods; americium-241 is approved with co-precipitation methods.

[12] If uranium (U) is determined by mass, a 0.67 pCi/µg of uranium conversion factor must be used. This conversion factor is based on the 1:1 activity ratio of U–234 and U–238 that is characteristic of naturally occuring uranium.

[13] "The Determination of Radium-226 and Radium-228 in Drinking Water by Gamma-ray Spectrometry Using HPGE or Ge(Li) Detectors." Available from the Environmental Resources Center, Georgia Institute of Technology, 620 Cherry Street, Atlanta, GA 30332–0335, USA, Phone: 404–8944–3776.

* * * * *

6. Section 141.74 is amended by adding one sentence to the end of footnote 1 to the table in paragraph (a)(1); and by revising paragraph (a)(2) to read as follows:

§ 141.74 Analytical and monitoring requirements.

(a) * * *

(1) * * *

* * * * *

[1] * * * In addition, the following on-line versions may also be used: 2310 B–01, 9215 B–00, 9221 A, B, C, E–99, 9222 A, B, C, D–97, and 9223–97.

* * * * *

(2) Public water systems must measure residual disinfectant concentrations with one of the analytical methods in the following table. If approved by the State, residual disinfectant concentrations for free chlorine and combined chlorine also may be measured by using DPD colorimetric test kits. In addition States may approve the use of the ITS free chlorine test strip for the determination of free chlorine. Use of the test strips is described in Method D99–003, "Free Chlorine Species" (HOCl- and OCl-) by Test Strip," [Revision 3.0, November 21, 2003], available from Industrial Test Systems, Inc., 1875 Langston St., Rock Hill SC 29730. Free and total chlorine residuals may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument provided the chemistry, accuracy, and precision remain the same. Instruments used for continuous monitoring must be calibrated with a grab sample measurement at least every five days, or with a protocol approved by the State.

Residual	Methodology	SM[1]	SM on-line[2]	Other
Free Chlorine	Amperometric Titration	4500–Cl D	4500–Cl D–00	D1253–03[3]
	DPD Ferrous Titrimetric	4500–Cl F	4500–Cl F–00	
	DPD Colorimetric	4500–Cl G	4500–Cl G–00	
	Syringaldazine (FACTS)	4500–Cl H	4500–Cl H–00	
Total Chlorine	Amperometric Titration	4500–Cl D	4500–Cl D–00	D1253–03[3]
	Amperometric Titration (low level measurement).	4500–Cl E	4500–Cl E–00	
	DPD Ferrous Titrimetric	4500–Cl F	4500–Cl F–00	
	DPD Colorimetric	4500–Cl G	4500–Cl G–00	
	Iodometric Electrode	4500–Cl I	4500–Cl I–00	
Chlorine Dioxide	Amperometric Titration	4500–ClO_2 C	4500-ClO_2 C–00	
	DPD Method	4500–ClO_2 D		
	Amperometric Titration	4500–ClO_2 E	4500–ClO_2 E–00	
	Spectrophotometric			327.0, Revision 1.0[4]
Ozone	Indigo Method	4500–O_3 B	4500–O_3 B	

[1] Except for the method for ozone residuals, the listed methods are contained in the 18th, 19th, and 20th editions of Standard Methods for the Examination of Water and Wastewater, 1992, 1995, and 1998; the cited methods published in any of these three editions may be used. The ozone method, 4500–O_3 B, is contained in the 18th, 19th, and 20th editions of Standard Methods for the Examination of Water and Wastewater, 1992, 1995, and 1998, respectively; any of these editions may be used.

[2] Standard Methods On-Line are available at http://www.standardmethods.org. The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only On-Line versions that may be used.

[3] Annual Book of ASTM Standards, Vol 11.01, 2004 of any year containing the cited version of the method.

[4] EPA Method 327.0, Revision 1.0, "Determination of Chlorine Dioxide and Chlorite Ion in Drinking Water Using Lissamine Green B and Horseradish Peroxidase with Detection of Visible Spectrophotometry," USEPA, July 2003. Available on-line at *http://www.epa.gov/safewater/methods/sourcalt.html.*

* * * * *

7. Section 141.131 is amended by revising paragraph (a)(2) and the entry for "Amperometric Detection" in the table in paragraph (c)(1) to read as follows:

§ 141.131 Analytical requirements.

(a) * * *

(2) The following documents are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at EPA's Drinking Water Docket, 1301 Constitution Avenue, NW., EPA West B–102, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington DC. EPA Method 552.1 is in *Methods for the Determination of Organic Compounds in Drinking Water-Supplement II,* USEPA, August 1992, EPA/600/R–92/129 (available through National Information Technical Service (NTIS), PB92–207703). EPA Methods 502.2, 524.2, 551.1, and 552.2 are in *Methods for the Determination of Organic Compounds in Drinking Water-Supplement III,* USEPA, August 1995, EPA/600/R–95/131. (available through NTIS, PB95–261616). EPA Method 300.0 is in *Methods for the Determination of Inorganic Substances in Environmental Samples,* USEPA, August 1993, EPA/600/R–93/100 (available through NTIS, PB94–121811). EPA Method 300.1 is titled *USEPA Method 300.1, Determination of Inorganic Anions in Drinking Water by Ion Chromatography, Revision 1.0,* USEPA, 1997, EPA/600/R–98/118 (available through NTIS, PB98–169196); also available from: Chemical Exposure Research Branch, Microbiological & Chemical Exposure Assessment Research Division, National Exposure Research Laboratory, U.S. Environmental Protection Agency, Cincinnati, OH 45268, Fax Number: 513–569–7757, Phone number: 513–569–7586. Standard Methods 4500–C1 D, 4500–C1 E, 4500–C1 F, 4500–C1 G, 4500–C1 H, 4500–C1 I, 4500–C1O2 D, 4500–C1O2 E, 6251 B, and 5910 B shall be followed in accordance with *Standard Methods for the Examination of Water and Wastewater, 19th Edition,* American Public Health Association, 1995; copies may be obtained from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005. Standard Methods 5310 B, 5310 C, and 5310 D shall be followed in accordance with the *Supplement to the 19th Edition of Standard Methods for the Examination of Water and Wastewater,* American Public Health Association, 1996; copies may be obtained from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005. Standard Method (SM) on-line are available at *http://www.standardmethods.org.* ASTM Method D 1253–86 shall be followed in accordance with the *Annual Book of ASTM Standards,* Volume 11.01, American Society for Testing and Materials, 1996 or any year containing the cited version of the method may be used. ASTM Method D 1253–03 shall be followed in accordance with the *Annual Book of ASTM Standards,* Volume 11.01, 2004 or any year containing the cited version of the method may be used. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

* * * * *

(c) * * *

(1) * * *

APPROVED METHODS FOR DISINFECTANT RESIDUAL COMPLIANCE MONITORING

Methodology	Standard Method	ASTM method	Residual measured[1]			
			Free chlorine	Combined chlorine	Total chlorine	Chlorine dioxide
Amperometric Titration	4500–Cl D	D 1253–86, 03	X	X	X	

APPROVED METHODS FOR DISINFECTANT RESIDUAL COMPLIANCE MONITORING—Continued

Methodology	Standard Method	ASTM method	Residual measured[1]			
			Free chlorine	Combined chlorine	Total chlorine	Chlorine dioxide
*	*	*	*	*	*	*

[1] X indicates method is approved for measuring specified disinfectant residual.

* * * * *

PART 143—NATIONAL SECONDARY DRINKING WATER REGULATIONS

1. The authority citation for part 143 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

2. Section 143.4 is amended by revising the table in paragraph (b) to read as follows:

§ 143.4 Monitoring.

* * * * *

(b) * * *

Contaminant	EPA	ASTM[3]	SM[4] 18th and 19th ed.	SM[4] 20th ed.	SM[7] On-line	Other
1. Aluminum	200.7[2]		3120 B	3120 B	3120 B–99	
	200.8[2]		3113 B		3113 B–99	
	200.9[2]		3111 D		3111 D–99	
2. Chloride	300.01[1]	D4327–97, 03	4110 B	4110 B	4110 B–00	
			4500–Cl D	4500–Cl D	4500–Cl D–97	
		D512–89(99) B	4500–C1 B	4500–Cl B	4500–Cl B–97	
						D6508, Rev. 2[6]
3. Color			2120 B	2120 B	2120 B–01	
4. Foaming Agents			5540 C	5540 C	5540 C–00	
5. Iron	200.7[2]		3120 B	3120 B	3120 B–99	
	200.9[2]		3111 B		3111 B–99	
			3113 B		3113 B–99	
6. Manganese	200.7[2]		3120 B	3120 B	3120 B–99	
	200.8[2]		3111 B		3111 B–99	
	200.9[2]		3113 B		3113 B–99	
7. Odor			2150 B	2150 B	2150 B–97	
8. Silver	200.7[2]		3120 B	3120 B	3120 B–99	I–3720–85[5]
	200.8[2]		3111 B		3111 B–99	
	200.9[2]		3113 B		3113 B–99	
9. Sulfate	300.0[1]	D4327–97, 03	4110 B	4110 B	4110 B–00	
	375.2[1]		4500–SO_4^{2-} F	4500–SO_4^{2-} F		
			4500–SO_4^{2-} C, D	4500–$SO4^{2-}$		
		D516–90, 02	4500–SO_4^{2-} E	4500–SO_4^{2-} E		
10. Total Dissolved Solids			2540 C	2540 C	2540 C–97	D6508, Rev. 2[6]
11. Zinc	200.7[2]		3120 B	3120 B	3120 B–99	
	200.8[2]		3111 B		3111 B–99	

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, EPA West, 1301 Constitution Avenue, NW., Room B102, Washington, DC (Telephone: 202–566–2426); or at the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20408.

[1] "Methods for the Determination of Inorganic Substances in Environmental Samples", EPA/600/R–93–100, August 1993. Available at NTIS, PB94–120821.

[2] "Methods for the Determination of Metals in Environmental Samples—Supplement I", EPA/600/R–94–111, May 1994. Available at NTIS, PB 95–125472.

[3] *Annual Book of ASTM Standards*, 1994, 1996, or 1999, Vols. 11.01 and 11.02, American Society for Testing and Materials; any year containing the cited version of the method may be used. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] *Standard Methods for the Examination of Water and Wastewater*, 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005. The cited methods published in any of these three editions may be used, except that the versions of 3111 B, 3111 D, and 3113 B in the 20th edition may not be used.

[5] Method I–3720–85, *Techniques of Water Resources Investigation of the U.S. Geological Survey*, Book 5, Chapter A–1, 3rd ed., 1989; Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225–0425.

[6] Method D6508, Rev. 2, "Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion Electrophoresis and Chromate Electrolyte," available from Waters Corp, 34 Maple St, Milford, MA 01757, 508/482–2131 (Office), 508/482–3625 (FAX).

[7] Standard Methods On-line are available at *http://www.standardmethods.org*.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority citation for part 403 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 403.12 is amended by removing the first sentence of paragraph (b)(5)(iii) and adding in its place four new sentences to read as follows:

§ 403.12 Reporting requirements for POTW's and industrial users.

* * * * *

(b) * * *

(5) * * *

(iii) Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, sulfide, fecal coliform, fecal streptococcus, and volatile organics, unless specified otherwise at 40 CFR part 136. For all other pollutants, a 24-hour composite sample, using a minimum of four (4) grab samples, must be obtained through flow-proportional composite sampling techniques where feasible and unless specified otherwise at 40 CFR part 136. Results of analyses of individual grab samples for any parameter may be averaged to form the daily average. Grab samples that are not required to be analyzed immediately (see Table II at 40 CFR 136.3(e)) may be composited in the laboratory, provided that container, preservation, and holding time requirements are met (see Table II at 40 CFR 136.3(e)) and that

sample integrity is not compromised by compositing. * * *

* * * * *

PART 430—THE PULP, PAPER, AND PAPERBOARD POINT SOURCE CATEGORY

1. The authority citation for part 430 continues to read as follows:

Authority: Sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, as amended, (33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361), and Section 112 of the Clean Air Act, as amended (42 U.S.C. 7412).

2. Section 430.02 is amended by adding paragraph (g) to read as follows:

§ 430.02 Monitoring requirements.

* * * * *

(g) Analyst may use NCASI Method CP–86.07, "Chlorinated Phenolics in Water by *In situ* Acetylation and GC/MS Determination" (January 2002) for determination of certain chlorinated phenols, chlorinated guaiacols, chlorinated catechols, chlorinated benzaldehydes (*i.e.*, vanillins and syringaldehydes), and trichlorsyringol (analytes specified in the method) in bleach plant filtrate as an alternative to EPA Method 1653. NCASI Method CP–86.07 is available from the Publications Coordinator, NCASI, P.O. Box 13318, Research Triangle Park, NC 27709–3318. Phone 919–588–1987.

PART 455—PESTICIDE CHEMICALS

1. The authority citation for part 455 continues to read as follows:

Authority: Secs. 301, 304, 306, 307, and 501, Pub. L. 92–500, 86 Stat. 816, Pub. L. 95–217, 91 Stat. 156, and Pub. L. 100–4 (33 U.S.C. 1311, 1314, 1316, 1317, 1361).

2. Section 455.50 is revised to read as follows:

§ 455.50 Identification of test procedures.

The pesticide active ingredients to which this section applies and for which effluent limitations guidelines and standards are specified in this part are named, together with the Chemical Abstracts Service (CAS) number (provided to assist in identifying the pesticide active ingredient only) and analytical method(s) designation(s) in Table IG at 40 CFR 136.3(a). Except as provided in 40 CFR 136.5, the discharge parameter values required under the Clean Water Act must be determined by one of the analytical methods cited and described in Table IG at 40 CFR 136.3(a). Pesticide manufacturers may not use the analytical method cited in Table 1B, Table 1C, or Table 1D of 40 CFR 136.3(a) to make these determinations (except where the method cited in those tables is identical to the method specified in Table IG at 40 CFR 136.3(a)). The full texts of the analytical methods cited in Table IG at 40 CFR 136.3(a) are contained in the *Methods For The Determination of Nonconventional Pesticides In Municipal and Industrial Wastewater, Volume I,* EPA 821–R–93–010A (August 1993 Revision I) and *Volume II,* EPA 821–R–93–010B (August 1993) (the "Compendium"). Each pesticide chemical manufacturer that is required to determine discharge parameter values under this part using one of the analytical methods cited in Table IG at 40 CFR 136.3(a) must request in writing a copy of the Compendium from the permit authority or local control authority (as applicable) prior to determining such discharge parameter values, unless the manufacturer already has a copy.

Table 7 to Part 455 [Removed and Reserved]

3. Table 7 to part 455 is removed and reserved.

PART 465—COIL COATING POINT SOURCE CATEGORY

1. The authority citation for part 465 continues to read as follows:

Authority: Secs. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977)(the "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 465.03 is amended by revising paragraph (c) to read as follows:

§ 465.03 Monitoring and reporting requirements.

* * * * *

(c) The analytical method required for determination of petroleum hydrocarbons (non-polar material) is given under the listing for "oil and grease" at 40 CFR 136.3(a), Table IB and must be used after December 31, 2005.

* * * * *

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Tuesday,
April 6, 2004

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 192

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines); Correction; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–00–7666; Amendment 192–95]

RIN 2137–AD54

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines); Correction

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; correction & petition for reconsideration.

SUMMARY: This document corrects a final rule published in the **Federal Register** on December 15, 2003 (68 FR 69778). That rule requires operators to develop integrity management programs for gas transmission pipelines located where a leak or rupture could do the most harm, *i.e.*, could impact high consequence areas (HCAs). The rule requires gas transmission pipeline operators to perform ongoing assessments of pipeline integrity, to improve data collection, integration, and analysis, to remediate the pipeline as necessary, and to implement additional preventive and mitigative actions. This document makes minor editorial corrections and clarifies the intent of several provisions in the rule. This document also addresses a petition for reconsideration filed by the Interstate Natural Gas Association of America (INGAA).

EFFECTIVE DATE: The effective date is April 6, 2004.

FOR FURTHER INFORMATION CONTACT: Mike Israni by phone at (202) 366–4571, by fax at (202) 366–4566, or by e-mail at *mike.israni@rspa.dot.gov,* regarding the subject matter of the final rule.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 2003, RSPA/OPS published a final rule (68 FR 69778) that requires operators of gas transmission pipelines to develop and implement a comprehensive integrity management program for pipeline segments where a failure would have the greatest impact to the public or property.

Errors and Language in the Rule Needing Correction or Clarification

OPS has identified errors in the published final rule (68 FR 69778; December 15, 2003), such as incorrect reference numbers, editorial errors, incorrect terms and misspellings. OPS has also identified language in several provisions of the rule that is confusing and needs clarification. Thus, this document either corrects the rule because of mistakes found since the rule was published or clarifies the language and intent of the rule. None of these substantively changes any requirement in the rule.

Petition for Reconsideration

On January 15, 2004, the Interstate Natural Gas Association of America (INGAA) filed a petition for reconsideration of the final rule on gas integrity management identifying corrections INGAA believed were needed in the rule. This document addresses that petition. This document addresses mistakes the petitioner has identified in the rule and clarifies ambiguous language the petitioner identified. However, this document does not address what INGAA identified as mistakes but that would substantively change the rule. (See section below titled "Recommended changes not made").

Corrections and Clarifications

Section 192.901 states that the integrity management program regulations apply to gas transmission pipelines. In the Preamble to the final rule, we stated our intent that the integrity management program requirements apply to gas transmission pipelines and not to gas gathering or distribution lines. However, § 192.9 provides that except for the requirements in §§ 192.1 and 192.150, operators of gathering lines must follow the requirements for transmission pipelines. We have clarified in § 192.9 that gathering lines are not subject to the requirements of subpart O. This clarification is to ensure that there is no misunderstanding about which gas pipelines the integrity management program requirements are intended to apply.

The final rule includes a definition for identified sites in § 192.903. One component of this definition is any building that is occupied by 20 or more persons for specified periods and that meets other specified criteria. The rule language is correct. However, in the preamble of the final rule, we incorrectly described the component as "buildings housing 50 or more people." The preamble discussion should have said "buildings housing 20 or more people" to match the rule requirement.

Section 192.903 included allowed an operator to choose one of two methods for identifying a high consequence area. Method 1 involves designating all class 3 and 4 areas as high consequence areas, and was intended to relieve operators from the need to calculate and evaluate potential impact circles in these areas. We intended, however, that an operator would have to calculate and evaluate potential impact circles on any transmission pipeline not in a class 3 or class 4 area. We used the phrase "outside a Class 3 or Class 4 location" to describe these high consequence areas. However, this phrase could be interpreted to include areas more than 660 feet from a pipeline where the pipeline is in a class 3 or 4 area. We did not intend for an operator to evaluate any areas further than 660 feet from the pipeline in these areas, since the pipeline is already in a high consequence area under the criteria of method 1. We replaced this phrase with "in a Class 1 or Class 2 location" to make it clear that we are referring to an evaluation of pipeline segments not already classified as high consequence areas.

In addition, another criterion under method 1 refers to potential impact circles containing an identified site, which again could be interpreted as requiring operators to calculate potential impact circles within existing class 3 and 4 areas. We have revised this criterion (paragraph (1)(iv)) to clarify that the evaluation need only be performed in class 1 and 2 areas, where the existence of an identified site might require that the area be considered a high consequence area.

Several provisions in the rule require notification to OPS and in some instances to a State pipeline safety authority when a State acts as an interstate agent on a covered segment of transmission pipeline or the State regulates a covered segment on an intrastate transmission pipeline. The language requiring the state notification was confusing. We have clarified the language.

The Preamble discussed the necessity of keeping state regulators informed versus the need to keep an operator's information about its system secure. Where security of information was a concern, we limited the information submission to OPS or to an interstate agent, as the statute required. Where security was not an issue, the rule included state notification on an intrastate transmission line regulated by the State. However, in two provisions on notification when an operator uses other technology to assess a covered segment for the baseline or reassessment (§§ 192.921(a)(4) and 192.937(c)(4)), we inadvertently left out the notification to a State when it is either an interstate

agent or regulates an intrastate transmission covered segment. We have corrected these omissions.

Section 192.913 of the final rule establishes conditions under which an operator may deviate from specific provisions of the rule, by establishing a performance-based program. One of the required criteria is that an operator have completed at least two integrity assessments on all covered pipeline segments (§ 192.913(b)(2)(i)). This was a mistake. The rule should have limited the prior integrity assessment to those segments the operator wants to include under the performance-based option. We have revised the criterion to require that at least two assessments must have been completed on all segments to be included in the operator's performance-based program. This change clarifies that an operator may establish a performance-based program covering only a portion of its pipeline segments subject to the final rule. The remaining covered segments would still be subject to the more prescriptive approach.

In § 192.917, paragraph (a) lists the types of threats an operator is to consider in its threat identification. We have revised the paragraph to clarify that the threats listed in the rule restate the threats listed in the ASME/ANSI B31.8S standard, and are not in addition to those in the standard.

In § 192.917, paragraph (b) requires an operator to gather and integrate data from its entire pipeline system that could be relevant to identifying potential threats to the covered pipeline segment. Although it seems self-evident that an operator must only gather and integrate existing data about its pipeline system, industry has expressed concern that an operator will be required to create data. We have revised the paragraph to clarify that the data has to exist before it is gathered and integrated for analysis.

In § 192.917, paragraph (e) requires an operator to analyze its pipeline to identify specific potential threats to the pipeline. This document revises two paragraphs in this section (paragraphs (e)(1) and (e)(3)) to provide additional clarity on information that must be included in these analyses. Paragraph (e)(1) now specifies that an operator is to use information from a direct assessment to help define where third party damage may exist. Similarly, paragraph (e)(3) now specifies that an operator is to use information from prior integrity assessments to determine the risk of failure in the covered segment from manufacturing and construction defects.

In § 192.917, paragraph (e)(3) also establishes requirements specific to pipe for which an operator has identified the threat of manufacturing and construction defects. This paragraph states that an operator may consider such defects to be stable defects if the operating conditions on the covered segment have not changed significantly "since December 17, 1998." We intended this provision to provide for a retrospective evaluation of five years, beginning from the date on which integrity management requirements were first established by the Pipeline Safety Improvement Act of 2002. These requirements would also apply, however, for pipeline in areas which may be identified as high consequence areas many years in the future. For such pipe, a retrospective evaluation reaching back to 1998 would not make sense. This paragraph has been revised to require that the retrospective evaluation cover 5 years, regardless of when the high consequence area is identified.

In § 192.917, paragraph (e)(4) establishes requirements specific to low-frequency electric resistance welded (ERW) pipe and lap welded pipe that satisfies conditions in an industry standard, ASME/ANSI B31.8S. The rule incorporates by reference the industry standard. The preamble to the final rule stated that these requirements would apply to pipe that has a history of seam failures. However, this criterion was inadvertently omitted from the rule. We have added the criterion with additional clarification. We have clarified that when a covered pipe segment has low frequency ERW pipe, lap welded or other pipe that satisfies the conditions in ASME B31.8S, Appendices A.4.3 and A4.4, and any such pipe in the system has a history of seam failure, or operating pressure on the covered segment has increased over the maximum operating pressure experienced during the preceding five years, the operator must prioritize the covered segment as a high risk segment for assessment purposes and must use a specified type of assessment technology. We have also clarified the capabilities that are required of the assessment technology.

In § 192.921, paragraph (a)(2) requires that a pressure test used for the baseline assessment of a covered pipeline segment must be conducted in accordance with subpart J of part 192. The test pressures required by subpart J, while adequate to demonstrate the segment's integrity, are lower than required to justify some of the reassessment intervals under § 192.939. To avoid confusion, we have added a sentence providing that higher test pressures that are in accordance with Table 3 of Section 5 of ASME/ANSI B31.8S may be needed to justify an extended reassessment interval under § 192.939.

In § 192.921, paragraph (g) requires that an assessment be completed for newly-installed pipe within ten years from when the pipe is installed. This paragraph allows a pressure test, meeting the requirements of 49 CFR part 192, subpart J, which would normally be conducted as part of installation, to be used to meet this requirement. The reference to this pressure test in the final rule referred to it as a post-installation test. That term was incorrect because subpart J allows reliance on tests conducted prior to installation. There is no technical reason to deviate from the established subpart J requirements, and the final rule has been changed to delete the term post-installation.

Section 192.925 sets forth the requirements for external corrosion direct assessment. The threat identification section (§ 192.917) requires operators to take actions to address particular threats. One of these threats is third-party damage. The data from a direct assessment can be relevant to identifying this damage, such as identifying coating damage that may indicate damage from a third party excavation. In § 192.925 we are adding a sentence to clarify that operators are to integrate data from the external corrosion direct assessment with data from internal inspection tools and other information relevant to the pipeline to help identify and address third-party damage.

In § 192.927, paragraph (b) includes requirements for the internal corrosion direct assessment (ICDA) process for the dry gas system. If an operator uses ICDA to assess a segment operating with electrolyte present in the gas stream, the operator must develop a plan that demonstrates how it will conduct ICDA in the segment to effectively address internal corrosion. This ICDA application would be other technology that requires notification to OPS and to the State pipeline safety authority, when applicable. We have clarified that an operator using ICDA for a wet gas system must provide this required notification.

In § 192.927, paragraph (c)(3) includes criteria to identify locations where direct examination of the pipe must be conducted when an operator is using ICDA. These criteria specified a minimum of two direct examinations, one of which must be at the low spot within the covered segment nearest to the beginning of the ICDA region and the second "at the upstream end of the pipe containing a covered segment,

having a slope not exceeding the critical angle of inclination nearest the end of the ICDA region." The wording of the second required location has caused confusion. We have clarified the language to specify that the second location be " farther downstream within a covered segment near the end of the ICDA Region." There is no technical difference in this change; the revised wording more clearly describes the requirement.

In § 192.927, paragraph (c)(4)(i) requires that operators using internal corrosion direct assessment (ICDA) evaluate its effectiveness as an assessment method and in determining whether more frequent reassessments are required. In the final rule, this paragraph required that this evaluation be done "in the same year in which ICDA is used." This could be unnecessarily burdensome, or even impractical, for situations in which ICDA is used late in a calendar year, as it would essentially require that the evaluations be performed immediately. This was not intended. This requirement has been revised to specify that the evaluation be carried out within a year of conducting the ICDA.

In § 192.933, paragraph (b) specifies that discovery of a condition is considered to occur when an operator has adequate information to determine that the condition "presents a potential threat to the integrity of the pipeline." As we explained in the Preamble to the final rule (68 FR 69797–98), adequate information to make this determination includes information that the condition is one included in ASME/ANSI B31.8S as needing a response. To further clarify the types of conditions that might be potential threats to a system's integrity we have added a sentence that explains that a potential threat includes the immediate repair, one-year and monitored conditions listed in the rule. The rule does not list all conditions that might present a potential threat but gives examples of those that are most common. Although a monitored condition does not present an immediate threat or need remediation within a year, it is a condition that presents a potential threat because a change could occur making the threat to the pipeline's integrity more immediate.

To protect against third-party damage, paragraph (b)(1)(iv) of § 192.935 requires an operator to monitor excavations near its pipelines or investigate when the operator finds evidence of any excavation it did not monitor. Although not intended, this paragraph could be read as requiring an operator to investigate (*i.e.*, excavate or conduct above ground measurements) whenever the operator finds evidence of encroachment involving excavation, even if the operator had monitored the excavation. This paragraph has been revised to reflect our intent that the investigation be limited to instances when the operator did not monitor the excavation.

In § 192.935, paragraph (d) specifies requirements for additional preventive and mitigative measures for a pipeline operating below 30% SMYS located in a Class 3 or Class 4 area but not in a high consequence area. Although the guidance table in appendix E had included measures to address external and internal corrosion threats, and additional preventive and mitigative measures for a pipeline operating below 30% SMYS located in a high consequence area, we did not include these measures in the rule language itself. We have added these measures to the rule.

In § 192.937, paragraph (c)(2) specifies that a pressure test used to reassess a covered pipeline segment must be conducted in accordance with Subpart J of Part 192. This reference to subpart J is revised to include Table 3 of Section 5 of ASME/ANSI B31.8S, for the reasons given in § 192.921(a)(2) above.

In § 192.939, paragraph (a) specifies reassessment intervals for a pipeline operating at or above 30% SMYS and paragraph (b) specifies reassessment intervals for a pipeline operating below 30% SMYS. Both paragraphs state that the minimum reassessment interval is seven years. This has been corrected now to state that the maximum reassessment interval is seven years.

In § 192.945, paragraph (a) requires an operator to include in its integrity management program methods to measure, on a semi-annual basis, whether the program is effective in assessing and evaluating the integrity of each covered pipeline segment and in protecting the high consequence areas. These measures include the four overall performance measures and the specific measures for each identified threat specified in ASME/ANSI B31.8S, appendix A. RSPA/OPS had intended that an operator submit only the four overall performance measures, by electronic or other means, on a semi-annual frequency. The additional measures are to be reviewed during inspections. However, the final rule mistakenly requires all measures to be submitted semi-annually. We have corrected paragraph (a) to specify that an operator submit the four overall performance measures semi-annually. In addition, we have included the dates by which an operator is to submit these semi-annual performance measures. Similarly, our intent was that performance measures related to external corrosion direct assessment were to be reviewed during inspection, not submitted to OPS. Accordingly, we have removed the requirement in paragraph (b) that these measures be submitted semi-annually.

Some of the examples in section I of appendix E that illustrate the methods for identifying high consequence areas are inconsistent with the definition in § 192.903. We have deleted the examples to avoid any confusion about the definition. The illustrative figure in this appendix, Figure E.I.A, is accurate, and has been retained.

Section II of appendix E provides additional guidance for operators on assessment methods and additional preventive and mitigative measures. Some, but not all, of the guidance in this appendix is applicable to pipelines operating below 30% SMYS. However, the title of the appendix incorrectly states that the guidance is only for assessment methods and applies only to pipelines operating below 30% SMYS. This is being corrected. The paragraphs in this appendix that refer to Tables E.II.1 and E.II.2 are also corrected to more accurately describe the information in those tables.

Table E.II.1, in appendix E, describes additional preventive and mitigative measures that must be taken for pipelines in class 3 or class 4 areas but not in high consequence areas. The title of the table and the heading for column 4 inaccurately refer to assessment methods, which are not described in this table. We have corrected the title and column heading.

Recommended Changes Not Made

In the petition for reconsideration of the final rule, several of the changes INGAA recommended are substantive changes to the final rule. The recommended changes were neither errors we had made in drafting the rule nor language we believe needs clarification. We have not made these changes because they do not reflect our intent and would substantively change the intent of the rule. Specifically, we have not included the following changes in this document.

- In § 192.913(b)(2)(ii), we have not changed the word "anomalies" to "defects". We use the word "anomalies" throughout the rule.
- In § 192.917(a), we have not deleted the description of the four types of general threats an operator must identify. INGAA noted that this listing is redundant to the descriptions in ASME/ANSI B31.8S. We consider the nature of these threats as key to

understanding the rule; therefore, the listing should be included in the rule. As we described above, we have clarified the language in this section to correct any impression that the described threats are in addition to those in the standard.

• In § 192.917(b), we have not, as INGAA suggested, substituted "similar segments" for the word "entire" in the requirement that an operator gather and integrate information on its entire pipeline system that could be relevant to the covered segment. A crucial element of integrity management is the integration of relevant information from the entire system, not just from certain segments of the system.

• In § 192.921(e), we have not adopted the suggestion that a prior assessment done before December 17, 2002 substantially meet the baseline requirements for the prior assessment to qualify as a baseline assessment. We believe that what constitutes substantial compliance is too subjective. There would be constant disagreement between operators and regulators about what substantial compliance means. We allowed more flexible requirements for a prior assessment under the performance-based option because that option sets additional and more stringent requirements. Those additional requirements are not present when a prior assessment is used under the non performance-based approach. Furthermore, to give operators flexibility in the use of prior assessments, in the final rule we deleted the proposed requirement that set a five-year period before December 17, 2002 and allowed any prior assessment before December 17, 2002 so long as it meets certain requirements.

• In § 192.927(c)(5)(iii), we have not deleted the word "entire" from the requirement that an operator's internal corrosion direct assessment plan provide for an analysis carried out on the entire pipeline in which covered segments are present.

• In § 192.937(b), we have not deleted the word "entire" from the requirement that an operator conduct a periodic evaluation that is based on a data integration and risk assessment of the entire pipeline.

• Several provisions in the rule differentiate requirements based on whether a transmission pipeline is operating below 30% SMYS, operating at or above 30% SMYS up to 50% SMYS or operating at or above 59% SMYS. We have not changed the categories. However, we recognize that these categories are changed in the draft 2004 version of the ASME B31.8S standard. Once that standard is finalized and if we adopt it into the rule, then we will change the stress classifications.

• We have not moved the notification procedures in §§ 192.941 and 192.951 to Part 191. These procedures are specific to notification for integrity management program purposes.

List of Subjects in 49 CFR Part 192

High consequence areas, Incorporation by reference, Integrity management, Pipeline safety, Potential impact areas, Reporting and recordkeeping requirements.

PART 192—[AMENDED]

■ Accordingly, 49 CFR part 192 is corrected by making the following correcting amendments:

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

■ 2. Section 192.9 is revised to read as follows:

§ 192.9 Gathering lines.

Except as provided in §§ 192.1 and192.150, and in subpart O, each operator of a gathering line must comply with the requirements of this part applicable to transmission lines.

* * * * *

■ 3. Section 192.903 is amended as follows:

■ a. In the definition of "Assessment", the word "nondestructive" is removed;

■ b. In the definition of "Confirmatory direct assessment", the word "integrity" is added in the first sentence before the words "assessment method";

■ c. The definition of "High consequence area" is revised; and

■ d. The definition of "Identified site" is amended by removing ")" at the end of paragraphs (a) and (b).

The additions and revisions read as follows:

§ 192.903 What definitions apply to this subpart?

* * * * *

High consequence area means an area established by one of the methods described in paragraphs (1) or (2) as follows:

(1) An area defined as—

(i) A Class 3 location under § 192.5; or

(ii) A Class 4 location under § 192.5; or

(iii) Any area in a Class 1 or Class 2 location where the potential impact radius is greater than 660 feet (200 meters), and the area within a potential impact circle contains 20 or more buildings intended for human occupancy; or

(iv) Any area in a Class 1 or Class 2 location where the potential impact radius contains an identified site.

(2) The area within a potential impact circle containing—

(i) 20 or more buildings intended for human occupancy, unless the exception in paragraph

(4) applies; or

(ii) An identified site.

* * * * *

■ 4. Section 192.909 is amended by revising paragraph (b) to read as follows:

§ 192.909 How can an operator change its integrity management program?

* * * * *

(b) *Notification.* An operator must notify OPS, in accordance with § 192.949, of any change to the program that may substantially affect the program's implementation or may significantly modify the program or schedule for carrying out the program elements. An operator must also notify a State or local pipeline safety authority when either a covered segment is located in a State where OPS has an interstate agent agreement, or an intrastate covered segment is regulated by that State. An operator must provide the notification within 30 days after adopting this type of change into its program.

* * * * *

§ 192.911 [Amended]

■ 5. In § 192.911, paragraph (i) is amended by removing "§ 192.943" and adding "§ 192.945" in its place.

■ 6. In § 192.913:

■ a. Paragraph (b)(1) (vii) is amended by removing "§ 192.943" and adding "§ 192.945" in its place; and

■ b. Paragraph (b)(2)(i) is revised to read as follows:

§ 192.913 When may an operator deviate its program from certain requirements of this subpart?

* * * * *

(b) * * *

(2) * * *

(i) Have completed at least two integrity assessments on each covered pipeline segment the operator is including under the performance-based approach, and be able to demonstrate that each assessment effectively addressed the identified threats on the covered segment.

* * * * *

■ 7. In § 192.917:

■ a. Paragraph (a) introductory text is revised;

■ b. Paragraph (b) is revised;

■ c. Paragraphs (e)(1), (e)(3) and (e)(4) are revised; and

■ d. Paragraph (e)(5) is amended by removing "§ 192.931" and adding "§ 192.933" in its place.

The revisions read as follows:

§ 192.917 How does an operator identify potential threats to pipeline integrity and use the threat identification in its integrity program?

(a) *Threat identification.* An operator must identify and evaluate all potential threats to each covered pipeline segment. Potential threats that an operator must consider include, but are not limited to, the threats listed in ASME/ANSI B31.8S (ibr, see § 192.7), section 2, which are grouped under the following four categories:

* * * * *

(b) *Data gathering and integration.* To identify and evaluate the potential threats to a covered pipeline segment, an operator must gather and integrate existing data and information on the entire pipeline that could be relevant to the covered segment. In performing this data gathering and integration, an operator must follow the requirements in ASME/ANSI B31.8S, section 4. At a minimum, an operator must gather and evaluate the set of data specified in Appendix A to ASME/ANSI B31.8S, and consider both on the covered segment and similar non-covered segments, past incident history, corrosion control records, continuing surveillance records, patrolling records, maintenance history, internal inspection records and all other conditions specific to each pipeline.

* * * * *

(e) * * *

(1) *Third party damage.* An operator must utilize the data integration required in paragraph (b) of this section and ASME/ANSI B31.8S, Appendix A7 to determine the susceptibility of each covered segment to the threat of third party damage. If an operator identifies the threat of third party damage, the operator must implement comprehensive additional preventive measures in accordance with § 192.935 and monitor the effectiveness of the preventive measures. If, in conducting a baseline assessment under § 192.921, or a reassessment under § 192.937, an operator uses an internal inspection tool or external corrosion direct assessment, the operator must integrate data from these assessments with data related to any encroachment or foreign line crossing on the covered segment, to define where potential indications of third party damage may exist in the covered segment.

An operator must also have procedures in its integrity management program addressing actions it will take to respond to findings from this data integration.

(2) * * *

(3) *Manufacturing and construction defects.* If an operator identifies the threat of manufacturing and construction defects (including seam defects) in the covered segment, an operator must analyze the covered segment to determine the risk of failure from these defects. The analysis must consider the results of prior assessments on the covered segment. An operator may consider manufacturing and construction related defects to be stable defects if the operating pressure on the covered segment has not increased over the maximum operating pressure experienced during the five years preceding identification of the high consequence area. If any of the following changes occur in the covered segment, an operator must prioritize the covered segment as a high risk segment for the baseline assessment or a subsequent reassessment.

(i) Operating pressure increases above the maximum operating pressure experienced during the preceding five years;

(ii) MAOP increases; or

(iii) The stresses leading to cyclic fatigue increase.

(4) *ERW pipe.* If a covered pipeline segment contains low frequency electric resistance welded pipe (ERW), lap welded pipe or other pipe that satisfies the conditions specified in ASME/ANSI B31.8S, Appendices A4.3 and A4.4, and any covered or noncovered segment in the pipeline system with such pipe has experienced seam failure, or operating pressure on the covered segment has increased over the maximum operating pressure experienced during the preceding five years, an operator must select an assessment technology or technologies with a proven application capable of assessing seam integrity and seam corrosion anomalies. The operator must prioritize the covered segment as a high risk segment for the baseline assessment or a subsequent reassessment.

* * * * *

■ 8. In § 192.921:

■ a. Paragraphs (a)(2) and (a)(4) are revised;

■ b. Paragraph (c) is amended by removing "§ 192.917(d)" and adding "§ 192.917(e)" in its place;

■ c. Paragraph (f) is amended by removing "§ 192.205" and adding "§ 192.905" in its place; and

■ d. Paragraph (g) to revised.

The revisions read as follows:

§ 192.921 How is the baseline assessment to be conducted?

(a) * * *

(1) * * *

(2) Pressure test conducted in accordance with subpart J of this part. An operator must use the test pressures specified in Table 3 of section 5 of ASME/ANSI B31.8S, to justify an extended reassessment interval in accordance with § 192.939.

(3) * * *

(4) Other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 180 days before conducting the assessment, in accordance with § 192.949. An operator must also notify a State or local pipeline safety authority when either a covered segment is located in a State where OPS has an interstate agent agreement, or an intrastate covered segment is regulated by that State.

* * * * *

(g) *Newly installed pipe.* An operator must complete the baseline assessment of a newly-installed segment of pipe covered by this subpart within ten (10) years from the date the pipe is installed. An operator may conduct a pressure test in accordance with paragraph (a)(2) of this section, to satisfy the requirement for a baseline assessment.

* * * * *

■ 9. Section 192.925 is amended by revising paragraph (b) to read as follows:

§ 192.925 What are the requirements for using External Corrosion Direct Assessment (ECDA)?

* * * * *

(b) *General requirements.* An operator that uses direct assessment to assess the threat of external corrosion must follow the requirements in this section, in ASME/ANSI B31.8S (ibr, see § 192.7), section 6.4, and in NACE RP 0502–2002 (ibr, see § 192.7). An operator must develop and implement a direct assessment plan that has procedures addressing preassessment, indirect examination, direct examination, and post-assessment. If the ECDA detects pipeline coating damage, the operator must also integrate the data from the ECDA with other information from the data integration (§ 192.917(b)) to evaluate the covered segment for the threat of third party damage, and to address the threat as required by § 192.917(e)(1).

* * * * *

■ 10. Section 192.927 is amended by revising paragraphs (b), (c)(3)

introductory text and (c)(4)(i) to read as follows:

§ 192.927 What are the requirements for using internal Corrosion Direct Assessment (ICDA)?

* * * * *

(b) *General requirements.* An operator using direct assessment as an assessment method to address internal corrosion in a covered pipeline segment must follow the requirements in this section and in ASME/ANSI B31.8S (ibr, see § 192.7), section 6.4 and appendix B2. The ICDA process described in this section applies only for a segment of pipe transporting nominally dry natural gas, and not for a segment with electrolyte nominally present in the gas stream. If an operator uses ICDA to assess a covered segment operating with electrolyte present in the gas stream, the operator must develop a plan that demonstrates how it will conduct ICDA in the segment to effectively address internal corrosion, and must provide notification in accordance with § 192.921 (a)(4) or § 192.937(c)(4).

(c) * * *

(3) *Identification of locations for excavation and direct examination.* An operator's plan must identify the locations where internal corrosion is most likely in each ICDA region. In the location identification process, an operator must identify a minimum of two locations for excavation within each ICDA Region within a covered segment and must perform a direct examination for internal corrosion at each location, using ultrasonic thickness measurements, radiography, or other generally accepted measurement technique. One location must be the low point (*e.g.*, sags, drips, valves, manifolds, dead-legs, traps) within the covered segment nearest to the beginning of the ICDA Region. The second location must be further downstream, within a covered segment, near the end of the ICDA Region. If corrosion exists at either location, the operator must—

(4) * * *

(i) Evaluating the effectiveness of ICDA as an assessment method for addressing internal corrosion and determining whether a covered segment should be reassessed at more frequent intervals than those specified in § 192.939. An operator must carry out this evaluation within a year of conducting an ICDA; and

* * * * *

■ 11. Section 192.929 is amended by revising paragraph (a) to read as follows:

§ 192.929 What are the requirements for using Direct Assessment for Stress Corrosion Cracking (SCCDA)?

(a) *Definition.* Stress Corrosion Cracking Direct Assessment (SCCDA) is a process to assess a covered pipe segment for the presence of SCC primarily by systematically gathering and analyzing excavation data for pipe having similar operational characteristics and residing in a similar physical environment.

* * * * *

■ 12. Section 192.933 is amended by revising paragraphs (b), (c) and (d)(1)(iii) to read as follows:

§ 192.933 What actions must be taken to address integrity issues?

* * * * *

(b) *Discovery of condition.* Discovery of a condition occurs when an operator has adequate information about a condition to determine that the condition presents a potential threat to the integrity of the pipeline. A condition that presents a potential threat includes, but is not limited to, those conditions that require remediation or monitoring listed under paragraphs (d)(1) through (d)(3) of this section. An operator must promptly, but no later than 180 days after conducting an integrity assessment, obtain sufficient information about a condition to make that determination, unless the operator demonstrates that the 180-day period is impracticable.

(c) *Schedule for evaluation and remediation.* An operator must complete remediation of a condition according to a schedule that prioritizes the conditions for evaluation and remediation. Unless a special requirement for remediating certain conditions applies, as provided in paragraph (d) of this section, an operator must follow the schedule in ASME/ANSI B31.8S (ibr, see § 192.7), section 7, Figure 4. If an operator cannot meet the schedule for any condition, the operator must justify the reasons why it cannot meet the schedule and that the changed schedule will not jeopardize public safety. An operator must notify OPS in accordance with § 192.949 if it cannot meet the schedule and cannot provide safety through a temporary reduction in operating pressure or other action. An operator must also notify a State or local pipeline safety authority when either a covered segment is located in a State where OPS has an interstate agent agreement, or an intrastate covered segment is regulated by that State.

(d) * * *

(1) * * *

(iii) An indication or anomaly that in the judgment of the person designated by the operator to evaluate the assessment results requires immediate action.

* * * * *

■ 13. In § 192.935:

■ a. The section heading of § 192.935 is revised;

■ b. Paragraphs (b)(1) introductory text, (b)(1)(ii), and (b)(1)(iv) are revised; and

■ c. Paragraph (d) introductory text is revised and paragraph (d)(3) is added.

■ The additions and revisions are as follows:

§ 192.935 What additional preventive and mitigative measures must an operator take?

* * * * *

(b) * * *

(1) *Third party damage.* An operator must enhance its damage prevention program, as required under § 192.614 of this part, with respect to a covered segment to prevent and minimize the consequences of a release due to third party damage. Enhanced measures to an existing damage prevention program include, at a minimum—

(i) * * *

(ii) Collecting in a central database information that is location specific on excavation damage that occurs in covered and non covered segments in the transmission system and the root cause analysis to support identification of targeted additional preventative and mitigative measures in the high consequence areas. This information must include recognized damage that is not required to be reported as an incident under part 191.

(iii) * * *

(iv) Monitoring of excavations conducted on covered pipeline segments by pipeline personnel. If an operator finds physical evidence of encroachment involving excavation that the operator did not monitor near a covered segment, an operator must either excavate the area near the encroachment or conduct an above ground survey using methods defined in NACE RP–0502–2002 (ibr, see § 192.7). An operator must excavate, and remediate, in accordance with ANSI/ASME B31.8S and § 192.933 any indication of coating holidays or discontinuity warranting direct examination.

* * * * *

(d) *Pipelines operating below 30% SMYS.* An operator of a transmission pipeline operating below 30% SMYS located in a high consequence area must follow the requirements in paragraphs (d)(1) and (d)(2)of this section, the requirements for a low stress external corrosion reassessment in § 192.941(b) and the requirements for a low stress

internal corrosion reassessment in § 192.941(c). An operator of a transmission pipeline operating below 30% SMYS located in a Class 3 or Class 4 area but not in a high consequence area must follow the requirements in paragraphs (d)(1), (d)(2) and (d)(3) of this section.

(1) * * *

(2) * * *

(3) Perform semi-annual leak surveys (quarterly for unprotected pipelines or cathodically protected pipe where electrical surveys are impractical).

* * * * *

■ 14. Section 192.937 is amended by revising paragraphs (c)(2) and (c)(4) to read as follows:

§ 192.937 What is a continual process of evaluation and assessment to maintain a pipeline's integrity?

* * * * *

(c) * * *

(2) Pressure test conducted in accordance with subpart J of this part. An operator must use the test pressures specified in Table 3 of section 5 of ASME/ANSI B31.8S, to justify an extended reassessment interval in accordance with § 192.939.

(3) * * *

(4) Other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 180 days before conducting the assessment, in accordance with § 192.949. An operator must also notify a State or local pipeline safety authority when either a covered segment is located in a State where OPS has an interstate agent agreement, or an intrastate covered segment is regulated by that State.

* * * * *

■ 15. In § 192.939:

■ a. Paragraphs (a) introductory text and (a)(1)(i) are revised;

■ b. Paragraph (a)(3) is amended by removing the word "calculation" at the end of the first sentence and adding the word "method" in its place;

■ c. Paragraph (b) introductory text is amended by removing the word "minimum" in the beginning of the second sentence and adding the word "maximum" in its place; and

■ d. Paragraph (b)(5) is revised and the undesignated paragraph before the table is designated as paragraph (b)(6).

■ The revisions read as follows:

§ 192.939 What are the required reassessment intervals?

* * * * *

(a) *Pipelines operating at or above 30% SMYS.* An operator must establish a reassessment interval for each covered segment operating at or above 30% SMYS in accordance with the requirements of this section. The maximum reassessment interval by an allowable reassessment method is seven years. If an operator establishes a reassessment interval that is greater than seven years, the operator must, within the seven-year period, conduct a confirmatory direct assessment on the covered segment, and then conduct the follow-up reassessment at the interval the operator has established. A reassessment carried out using confirmatory direct assessment must be done in accordance with § 192.931. The table that follows this section sets forth the maximum allowed reassessment intervals.

(1) * * *

(i) Basing the interval on the identified threats for the covered segment (see § 192.917) and on the analysis of the results from the last integrity assessment and from the data integration and risk assessment required by § 192.917; or

* * * * *

(b) * * *

(5) Reassessment by the low stress assessment method at 7-year intervals in accordance with § 192.941 with reassessment by one of the methods listed in paragraphs (b)(1) through (b)(3) of this section by year 20 of the interval.

The following table sets forth the maximum reassessment intervals. Also refer to Appendix E.II for guidance on Assessment Methods and Assessment Schedule for Transmission Pipelines Operating Below 30% SMYS. In case of conflict between the rule and the guidance in the Appendix, the requirements of the rule control. An operator must comply with the following requirements in establishing a reassessment interval for a covered segment:

* * * * *

§ 192.941 [Amended]

■ 16. In § 192.941, paragraph (b)(2)(ii) is amended by removing the term "1½ years" in the first sentence and adding "18 months" in its place.

■ 17. Section 192.943 is amended by revising paragraph (a)(1) to read as follows:

§ 192.943 When can an operator deviate from these reassessment intervals?

* * * * *

(a) * * *

(1) *Lack of internal inspection tools.* An operator who uses internal inspection as an assessment method may be able to justify a longer reassessment period for a covered segment if internal inspection tools are not available to assess the line pipe. To justify this, the operator must demonstrate that it cannot obtain the internal inspection tools within the required reassessment period and that the actions the operator is taking in the interim ensure the integrity of the covered segment.

* * * * *

■ 18. Section 192.945 is amended as follows:

■ a. Paragraph (a) to revised; and

■ b. Paragraph (b) is amended by removing the last sentence.

§ 192.945 What methods must an operator use to measure program effectiveness?

(a) *General.* An operator must include in its integrity management program methods to measure, on a semi-annual basis, whether the program is effective in assessing and evaluating the integrity of each covered pipeline segment and in protecting the high consequence areas. These measures must include the four overall performance measures specified in ASME/ANSI B31.8S (ibr, see § 192.7), section 9.4, and the specific measures for each identified threat specified in ASME/ANSI B31.8S, Appendix A. An operator must submit the four overall performance measures, by electronic or other means, on a semi-annual frequency to OPS in accordance with § 192.951. An operator must submit its first report on overall performance measures by August 31, 2004. Thereafter, the performance measures must be complete through June 30 and December 31 of each year and must be submitted within 2 months after those dates.

* * * * *

§ 192.947 [Amended]

■ 19. In § 192.947 second sentence is amended by removing "minium" and adding "minimum" in its place.

Appendix A to Part 192 [Amended]

■ 20. Appendix A to part 192 is amended by redesignating paragraph numbers II. F. and II. G. as paragraph numbers II. H. and II. I., respectively.

■ 21. Appendix E to part 192 is revised to read as follows:

Appendix E to Part 192—Guidance on Determining High Consequence Areas and on Carrying out Requirements in the Integrity Management Rule

I. Guidance on Determining a High Consequence Area

To determine which segments of an operator's transmission pipeline system are covered for purposes of the integrity

management program requirements, an operator must identify the high consequence areas. An operator must use method (a) or (b) from the definition in § 192.903 to identify a high consequence area. An operator may apply one method to its entire pipeline system, or an operator may apply one method to individual portions of the pipeline system. (Refer to figure E.I.A for a diagram of a high consequence area).

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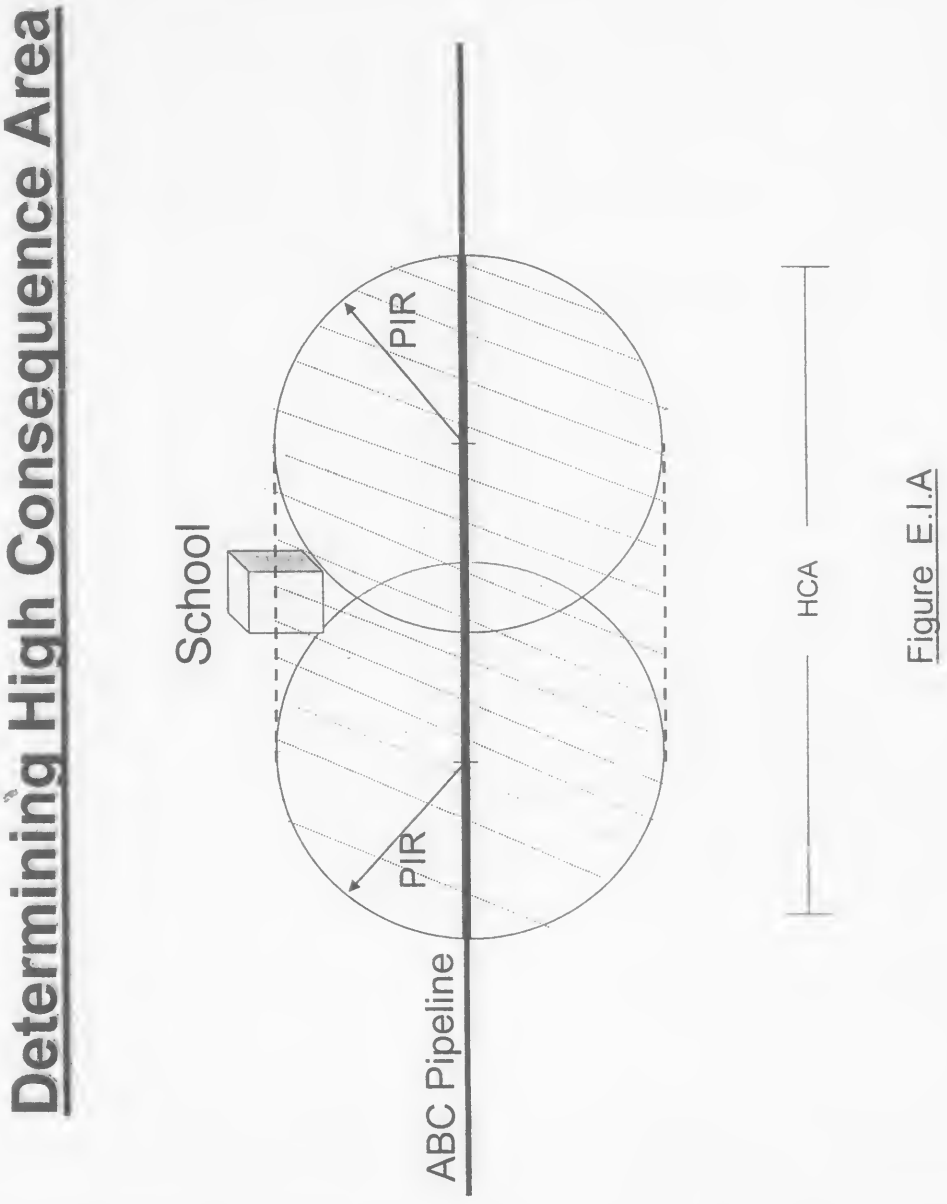

Figure E.I.A

II. Guidance on Assessment Methods and Additional Preventive and Mitigative Measures for Transmission Pipelines

(a) Table E.II.1 gives guidance to help an operator implement requirements on additional preventive and mitigative measures for addressing time dependent and independent threats for a transmission pipeline operating below 30% SMYS not in an HCA (*i.e.* outside of potential impact circle) but located within a Class 3 or Class 4 Location.

(b) Table E.II.2 gives guidance to help an operator implement requirements on assessment methods for addressing time dependent and independent threats for a transmission pipeline in an HCA.

(c) Table E.II.3 gives guidance on preventative & mitigative measures addressing time dependent and independent threats for transmission pipelines that operate below 30% SMYS, in HCAs.

Table E.II.1: Preventive and Mitigative Measures for Transmission Pipelines Operating Below 30% SMYS not in an HCA but in a Class 3 or Class 4 Location

(Column 1) Threat	Existing 192 Requirements		(Column 4) Additional (to 192 requirements) Preventive and Mitigative Measures
	(Column 2) Primary	(Column 3) Secondary	
External Corrosion	455-(Gen. Post 1971), 457-(Gen. Pre-1971) 459-(Examination), 461-(Ext. coating) 463-(CP), 465-(Monitoring) 467-(Elect isolation), 469-Test stations) 471-(Test leads), 473-(Interference) 479-(Atmospheric), 481-(Atmospheric) 485-(Remedial), 705-(Patrol) 706-(Leak survey), 711 (Repair – gen.) 717-(Repair – perm.)	603-(Gen Oper'n) 613-(Surveillance)	For Cathodically Protected Transmission Pipeline: • Perform semi-annual leak surveys. For Unprotected Transmission Pipelines or for Cathodically Protected Pipe where Electrical Surveys are Impractical: • Perform quarterly leak surveys
Internal Corrosion	475-(Gen IC), 477-(IC monitoring) 485-(Remedial), 705-(Patrol) 706-(Leak survey), 711 (Repair – gen.) 717-(Repair – perm.)	53(a)-(Materials) 603-(Gen Oper'n) 613-(Surveillance)	• Perform semi-annual leak surveys.

3rd Party Damage	103-(Gen. Design), 111-(Design factor) 317-(Hazard prot), 327-(Cover) 614-(Dam. Prevent), 616-(Public education) 705-(Patrol), 707-(Line markers) 711 (Repair – gen.), 717-(Repair – perm.)	615–(Emerg. Plan)	• Participation in state one-call system, • Use of qualified operator employees and contractors to perform marking and locating of buried structures and in direct supervision of excavation work, AND • Either monitoring of excavations near operator's transmission pipelines, or bi-monthly patrol of transmission pipelines in class 3 and 4 locations. Any indications of unreported construction activity would require a follow up investigation to determine if mechanical damage occurred.

Table E.II.2 Assessment Requirements for Transmission Pipelines in HCAs (Re-assessment intervals are maximum allowed)

	Re-Assessment Requirements (see Note 3)					
	At or above 50% SMYS		At or above 30% SMYS up to 50% SMYS		Below 30% SMYS	
Baseline Assessment Method (see Note 3)	Max Re-Assessment Interval	Assessment Method	Max Re-Assessment Interval	Assessment Method	Max Re-Assessment Interval	Assessment Method
Pressure Testing	7	CDA	7	CDA	Ongoing	Preventative & Mitigative (P&M) Measures (see Table E.II.3), (see Note 2)
	10	Pressure Test or ILI or DA				
		Repeat inspection cycle every 10 years	15(see Note 1)	Pressure Test or ILI or DA (see Note 1)		
				Repeat inspection cycle every 15 years	20	Pressure Test or ILI or DA
						Repeat inspection cycle every 20 years
In-Line Inspection	7	CDA	7	CDA	Ongoing	Preventative & Mitigative (P&M) Measures (see Table E.II.3), (see Note 2)
	10	ILI or DA or Pressure Test				
		Repeat inspection cycle every 10 years	15(see Note 1)	ILI or DA or Pressure Test (see Note 1)		
				Repeat inspection cycle every 15 years	20	ILI or DA or Pressure Test

						Repeat inspection cycle every 20 years
Direct Assessment	7	CDA	7	CDA	Ongoing	Preventative & Mitigative (P&M) Measures (see Table E.II.3), (see Note 2)
	10	DA or ILI or Pressure Test				
		Repeat inspection cycle every 10 years	15(see Note 1)	DA or ILI or Pressure Test (see Note 1)		
				Repeat inspection cycle every 15 years	20	DA or ILI or Pressure Test
						Repeat inspection cycle every 20 years

Note 1: Operator may choose to utilize CDA at year 14, then utilize ILI, Pressure Test, or DA at year 15 as allowed under ASME B31.8S

Note 2: Operator may choose to utilize CDA at year 7 and 14 in lieu of P&M

Note 3: Operator may utilize "other technology that an operator demonstrates can provide an equivalent understanding of the condition of line pipe"

Table E.II.3

Preventative & Mitigative Measures addressing Time Dependent and Independent Threats for Transmission Pipelines that Operate Below 30% SMYS , in HCAs

Threat	Existing 192 Requirements		Additional (to 192 requirements) Preventive & Mitigative Measures
	Primary	Secondary	
External Corrosion	455-(Gen. Post 1971) 457-(Gen. Pre-1971) 459-(Examination) 461-(Ext. coating) 463-(CP) 465-(Monitoring) 467-(Elect isolation)	603-(Gen Oper) 613-(Surveil)	For Cathodically Protected Trmn. Pipelines • Perform an electrical survey (i.e. indirect examination tool/method) at least every 7 years. Results are to be utilized as part of an overall evaluation of the CP system and corrosion threat for the covered segment. Evaluation shall include consideration of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment.

External Corrosion	469-Test stations) 471-(Test leads) 473-(Interference) 479-(Atmospheric) 481-(Atmospheric) 485-(Remedial) 705-(Patrol) 706-(Leak survey) 711 (Repair – gen.) 717-(Repair – perm.)		<u>For Unprotected Trmn. Pipelines or for Cathodically Protected Pipe where Electrical Surveys are Impracticable</u> • Conduct quarterly leak surveys AND • Every 1-1/2 years, determine areas of active corrosion by evaluation of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment.
Internal Corrosion	475-(Gen IC) 477-(IC monitoring) 485-(Remedial) 705-(Patrol) 706-(Leak survey) 711 (Repair – gen.) 717-(Repair – perm.)	53(a)-(Materials) 603-(Gen Oper) 613-(Surveil)	• Obtain and review gas analysis data each calendar year for corrosive agents from transmission pipelines in HCAs, • Periodic testing of fluid removed from pipelines. Specifically, once each calendar year from each storage field that may affect transmission pipelines in HCAs, AND • At least every 7 years, integrate data obtained with applicable internal corrosion leak records, incident reports, safety related condition reports, repair records, patrol records, exposed pipe reports, and test records.

3rd Party Damage	103-(Gen. Design) 111-(Design factor) 317-(Hazard prot) 327-(Cover) 614-(Dam. Prevent) 616-(Public educat) 705-(Patrol) 707-(Line markers) 711 (Repair - gen.) 717-(Repair - perm.)	615 –(Emerg Plan)	• Participation in state one-call system, • Use of qualified operator employees and contractors to perform marking and locating of buried structures and in direct supervision of excavation work, AND • Either monitoring of excavations near operator's transmission pipelines, or bi-monthly patrol of transmission pipelines in HCAs or class 3 and 4 locations. Any indications of unreported construction activity would require a follow up investigation to determine if mechanical damage occurred.

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

Samuel G. Bonasso,

Deputy Administrator.

[FR Doc. 04–6398 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–60–P

Federal Register

Tuesday,
April 6, 2004

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 19

Federal Acquisition Regulation; Contract Federal Acquisition Regulation; Mentor Protégé Program—Delegation of Approval Authority for Mentor Protégé Agreements; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAR Case 2003–010]

RIN 9000–AJ90

Federal Acquisition Regulation; Contract Federal Acquisition Regulation; Mentor Protégé Program—Delegation of Approval Authority for Mentor Protégé Agreements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to change the approval authority of Mentor Protégé Agreements for the DoD Military Department or Defense Agencies and to make minor changes for clarification.

DATES: Interested parties should submit comments in writing on or before June 7, 2004, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—

General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2003–010@gsa.gov*.

Please submit comments only and cite FAR case 2003–010 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAR case 2003–010.

SUPPLEMENTARY INFORMATION:

A. Background

The Pilot Mentor-Protégé Program was established under Section 831 of Public Law 101–510, the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2302 note). The purpose of the Program is to provide incentives to major Department of Defense (DoD) contractors to assist Protégé firms in enhancing their capabilities to satisfy DoD and other contract and subcontract requirements. Under the Mentor-Protégé Program, eligible companies approved as mentor firms will enter into mentor-protégé agreements with eligible protégé firms to provide appropriate developmental assistance to enhance the capabilities of the Protégé firms to perform as subcontractors and suppliers. DoD may provide the mentor firm with either cost reimbursement or credit against applicable subcontracting goals established under contracts with DoD or other Federal agencies.

The Department of Defense in an effort to streamline and transform itself in order to more effectively achieve its mission and in recognition that the military departments have the necessary expertise to manage programs efficiently is proposing to transfer the management of the Mentor Protégé program to the military departments and defense agencies. The Office of the Secretary of Defense will maintain oversight and policy development responsibilities.

Accordingly, the FAR is amended to state that the Director, Small and Disadvantaged Business Utilization of the cognizant DoD military department or defense agency will be the approval authority for mentor-protégé agreements.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule removes a restriction, thus allowing DoD to make a minor policy change. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 52 in accordance with 5 U.S.C. 610.

Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2003–010), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: March 30, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 19 as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR part 19 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 19.702 by revising paragraph (d) to read as follows:

19.702 Statutory requirements.

* * * * *

(d) As authorized by 15 U.S.C. 637(d)(11), certain costs incurred by a mentor firm in providing developmental assistance to a protégé firm under the Department of Defense Pilot Mentor-Protégé Program, may be credited as if they were subcontract awards to a protégé firm for the purpose of determining whether the mentor firm attains the applicable goals under any subcontracting plan entered into with any executive agency. However, the mentor-protégé agreement must have been approved by the Director, Small and Disadvantaged Business Utilization of the cognizant DoD military department or defense agency before developmental assistance costs may be credited against subcontract goals. A list of approved agreements may be obtained at *http://www.acq.osd.mil/sadbu/mentor_protege/* or by calling (703) 588–8631.

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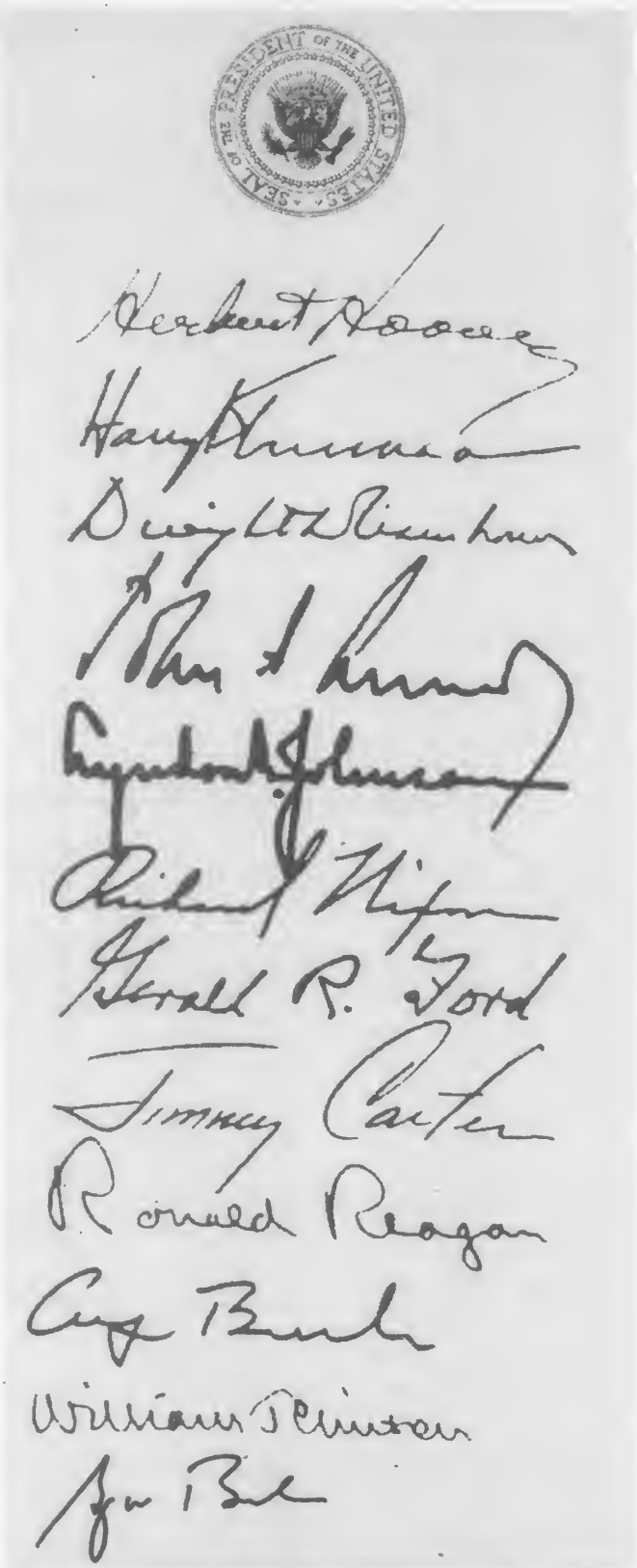

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