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7–2–04 Friday
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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

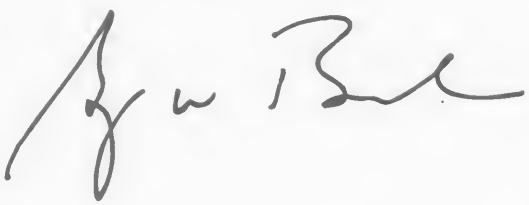
Presidential Determination No. 2004–38 of June 24, 2004

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $34 million be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet unexpected urgent refugee and migration needs, including those of refugees, displaced persons, conflict victims, and other persons at risk, from the crises in the West Bank and Gaza, Sudan, and Chad. These funds may be used, as appropriate, to provide contributions to international, governmental, and nongovernmental organizations, and, as necessary, for administrative expenses of the Bureau of Population, Refugees, and Migration.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to arrange for the publication of this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 24, 2004.

[FR Doc. 04–15207
Filed 7–1–04; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 69, No. 127
Friday, July 2, 2004

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM283, Special Conditions No. 25–266–SC]

Special Conditions: Dassault Mystere Falcon Model 20–C5/–D5/–E5/–F5 and Fanjet Falcon ModelC/D/E/F Series Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Dassault Mystere Falcon Model 20–C5/–D5/–E5/–F5 and Fanjet Falcon Model C/D/E/F series airplanes modified by Flight Test Associates, Inc. These modified airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates installation of Ametek Model AM–250 barometric altimeters. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 3, 2004.

Comments must be received on or before August 2, 2004.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM283 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM283.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On August 11, 2003, Flight Test Associates, Inc., Mojave, California, applied to the FAA, Los Angeles Aircraft Certification Office, for a supplemental type certificate (STC) to modify Dassault Mystere Falcon Model 20–C5/–D5/–E5/–F5 and Fanjet Falcon Model C/D/E/F series airplanes. The Dassault Mystere Falcon Model 20–C5/–D5/–E5/–F5 and Fanjet Falcon Model C/D/E/F series airplanes are small transport category airplanes powered by two turbine engines, with maximum takeoff weights of up to 29,000 pounds. These airplanes operate with a 2-pilot crew and can seat up to 10 passengers. These models are currently approved under Type Certificate No. A7EU. The proposed modification incorporates installation of Ametek Model AM–250 barometric altimeters. The information this equipment presents is flight critical. The barometric altimeters to be installed on this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Flight Test Associates must show that the Dassault Mystere Falcon Model 20–C5/–D5/–E5/–F5 and Fanjet Falcon Model C/D/E/F series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A7EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A7EU include Civil Air Regulations (CAR) 4b, as amended by amendments 4b–1 through 4b–12, Special Regulation SR422B, and certain requirements of 14 CFR part 25, Amendment levels 25–1 through 25–56. If the Administrator finds that the applicable airworthiness regulations (*i.e.*, CAR 4b, as amended) do not contain adequate or appropriate safety standards for the modified Dassault Mystere Falcon Model 20–C5/

–D5/–E5/–F5 and Fanjet Falcon Model C/D/E/F series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the modified Dassault Mystere Falcon Model 20–C5/–D5/–E5/–F5 and Fanjet Falcon Model C/D/E/F series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Flight Test Associates apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A7EU to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the modified Dassault Mystere Falcon Model 20–C5/–D5/–E5/–F5 and Fanjet Falcon Model C/D/E/F series airplanes will incorporate new barometric altimeters that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

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

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Dassault Mystere Falcon Model 20–C5/–D5/–E5/–F5 and Fanjet Falcon Model C/D/E/F series airplanes. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

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

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

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

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

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

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

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

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

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

Applicability

As discussed above, these special conditions are applicable to Dassault Mystere Falcon Model 20–C5/–D5/–E5/–F5 and Fanjet Falcon Model C/D/E/F series airplanes modified by Flight Test Associates. Should Flight Test Associates apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A7EU to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the Dassault Mystere Falcon Model 20–C5/–D5/–E5/–F5 and Fanjet Falcon Model C/D/E/F series airplanes modified by Flight Test Associates. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

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

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type

certification basis for the Dassault Mystere Falcon Model 20–C5/–D5/–E5/–F5 and Fanjet Falcon Model C/D/E/F series airplanes modified by Flight Test Associates:

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

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

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

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

Franklin Tiangsing,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15036 Filed 7–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–105–AD; Amendment 39–13694; AD 2004–13–12]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all EMBRAER Model EMB–120 series airplanes, that requires revising the Airplane Flight Manual to ensure that the propeller synchronizer switch is "OFF" after engine start and before takeoff and landing. This action is necessary to prevent a possible loss of airplane control and subsequent injury to the flight crew and passengers. This action is intended to address the identified unsafe condition.

DATES: Effective August 6, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 6, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all EMBRAER Model EMB–120 series airplanes was published in the **Federal Register** on April 1, 2004 (69 FR 17095). That action proposed to require revising the Airplane Flight Manual to ensure that the propeller synchronizer switch is "OFF" after engine start and before takeoff and landing.

Comments

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

One commenter requests that the FAA modify the Discussion section in the proposed AD to read "* * * the pilot's control of engine power during critical phases of the flight could be limited below the maximum power. Such limitation could result in a reduction of certified climb gradient and subsequent injury to the flight crew and passengers" instead of "* * * the pilot's control of engine power during critical phases of the flight could be impeded. Such an impediment could result in loss of control of the airplane and subsequent injury to the flight crew and passengers."

We agree with the commenter's request. However, the Discussion section of the proposed AD is not restated in the final rule, so no change to the final rule is needed.

Explanation of Change Made to Final Rule

We have revised paragraph (a)(2) of this final rule to reference Revision 65 of EMBRAER EMB–120 Airplane Flight Manual AFM–120/794; the proposed AD referenced revision 64 as the appropriate service information for the AFM revision. The specific AFM pages referenced in that paragraph were not revised at Revision 65, so they remain marked as Revision 64. However, because the AFM is at Revision 65, this revision is necessary to correctly identify the AFM and to meet the Office of the Federal Register's guidelines for materials incorporated by reference. There is no change to the AFM revision requirement specified in that paragraph.

Conclusion

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

Cost Impact

The FAA estimates that 217 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required 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 $14,105, 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:

2004–13–12 Empresa Brasileira De Aeronautica S.A. (Embraer): Amendment 39–13694. Docket 2003–NM–105–AD.

Applicability: All Model EMB–120 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a possible loss of airplane control and subsequent injury to the flight crew and passengers, accomplish the following:

Revision of the Airplane Flight Manual (AFM)

(a) Within 30 days from the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Revise the Limitations Section of the AFM to include the following text in "Section II—Limitations" under title "Powerplant," subtitle "Propeller" (this may be accomplished by inserting a copy of this AD into the AFM):

"For takeoff and landing PROP SYNC must be OFF"

Note 1: When a statement identical to that in paragraph (a)(1) 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.

(2) Revise the Normal Procedures section of the AFM by inserting pages 4–17, 4–23, and 4–27 of EMBRAER AFM 120/794, Revision 65, dated June 10, 2003, into the AFM.

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.

Incorporation by Reference

(c) Unless otherwise specified in this AD, the actions shall be done in accordance with EMBRAER EMB–120 Airplane Flight Manual AFM–120/794, Revision 65, dated June 10, 2003, which contains the following list of effective pages:

Page number	Revision level shown on page	Date shown on page
List of Effective Pages—Pages A–F	65	June 10, 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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 2: The subject of this AD is addressed in Brazilian airworthiness directive 2003–02–01, dated March 3, 2003.

Effective Date

(d) This amendment becomes effective on August 6, 2004.

Issued in Renton, Washington, on June 16, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–14571 Filed 7–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

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

Modification of Class E Airspace; Columbus, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace areas at Columbus, NE. A review of the Class E airspace surface area and the Class E airspace area extending upward from 700 feet above the surface at Columbus, NE reveals neither reflects the current Columbus Municipal Airport airport reference point (ARP). Also neither airspace area complies with criteria for extensions or for diverse departures. These airspace areas are modified to conform to provide controlled airspace of appropriate dimensions to protect aircraft departing and executing Instrument Approach Procedures (IAPs) to Columbus Municipal Airport. It modifies the extensions to both Columbus, NE Class E airspace areas, enlarges these airspace areas and brings their legal descriptions into compliance with FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, September 30, 2004. Comments for inclusion in the Rules Docket must be received on or before August 10, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–18013/Airspace Docket No. 04–ACE–42, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E surface area and the Class E airspace area extending upward from 700 feet above the surface at Columbus, NE. An examination of controlled airspace for Columbus, NE revealed that the Columbus Municipal Airport ARP used in the legal descriptions for both Class E airspace areas is incorrect. The Class E surface area is enlarged from a 4 to a 4.7-mile radius of the airport, its southeast extension reduced in width from 2.6 to 1.4 miles each side of center and its northwest extension redefined relative to the Platte Center nondirectional radio beacon (NDB) and reduced in width from 3.5 to 1.9 miles each side of center. The Class E airspace area extending upward from 700 feet above the surface is increased from a 6.6-mile radius to a 7.7-mile radius of the airport, its southeast extension is extended 1.5 miles and reduced in width from 4.2 to 1.6 miles each side of center and its northwest extension redefined relative to the Platte Center NDB and reduced in width from 4 to 1.9 miles each side of center. These modifications bring the legal descriptions of the Columbus, NE Class E airspace areas into compliance with FAA Orders 7400.2E, Procedures for Handling Airspace Matters, and 8260.19C, Flight Procedures and Airspace. Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–18013/Airspace Docket No. 04–ACE–42." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

Authority: 49 U.S.C. 106(6), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

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

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE NE E2 Columbus, NE

Columbus Municipal Airport, NE
(Lat. 41°26′53″ N., long. 97°20′34″ W.)
Columbus VOR/DME
(Lat. 41°27′00″ N., long. 97°20′27″ W.)
Platte Center NDB
(Lat. 41°29′48″ N., long. 97°22′54″ W.)

Within a 4.7-mile radius of Columbus Municipal Airport and within 1.4 miles each side of the Columbus VOR/DME 157° radial extending from the 4.7-mile radius of the airport to 7 miles southeast of the VOR/DME and within 1.4 miles each side of the Columbus VOR/DME 317° radial extending from the 4.7-mile radius of the airport to 7 miles northwest of the VOR/DME and within 1.9 miles each side of the 330° bearing from Platt Center NDB extending from the 4.7-mile radius of the airport to 7 miles northwest of the NDB.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE NE E5 Columbus, NE

Columbus Municipal Airport, NE
(Lat. 41°26′53″ N., long. 97°20′34″ W.)
Columbus VOR/DME
(Lat. 41°27′00″ N., long. 97°20′27″ W.)
Platte Center NDB

(Lat. 41°29'48" N., long. 97°22'54" W.)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of Columbus Municipal Airport and within 1.6 miles each side of the Columbus VOR/DME 157° radial extending from the 7.7-mile radius of the airport to 11 miles southeast of the VOR/DME and within 1.9 miles each side of the 330° bearing from Platt Center NDB extending from the 4.7-mile radius of the airport to 7 miles northwest of the NDB.

* * * * *

Issued in Kansas City, MO, on June 24, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–15115 Filed 7–1–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 110

[Docket No. 2004N–0230]

Food; Current Good Manufacturing Practice Regulations; Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meetings.

SUMMARY: The Food and Drug Administration (FDA) is announcing three public meetings to solicit comments, data, and scientific information about the current state of quality management techniques, quality systems approaches, and voluntary industry standards concerning current good manufacturing practices (CGMPs) and other controls used by food manufacturers and processors to prevent, reduce, control, or eliminate food borne hazards that can occur during food production or processing. The meetings are intended to elicit information about FDA's CGMP in manufacturing, packing, or holding human food regulations. This information will be useful in determining appropriate revisions to these regulations. We ask that those who speak at the meetings or otherwise provide FDA with their comments focus on our questions given in section II of this document about the CGMP regulations and other quality management techniques. There also will be an opportunity to address small business concerns at the meetings. This document reschedules meetings announced in the **Federal Register** of May 21, 2004 (69 FR 29220).

DATES: The revised dates for the public meetings are as follows: in College Park, MD, on Monday, July 19, 2004, from 9 a.m. to 12 noon; in Chicago, IL, on Wednesday, July 21, 2004, from 2 p.m. to 5 p.m.; and in San Jose, CA, on Thursday, August 5, 2004, from 9 a.m. to 12 noon. You should register for any of the meetings by fax or e-mail (see **FOR FURTHER INFORMATION CONTACT**). For security reasons and due to space limitations, we recommend that you register at least 5 days prior to the meeting you wish to attend. You may register by fax or e-mail until close of business 5 days before the meeting you wish to attend, provided that space is available. In addition to participating at the public meetings, you may submit written or electronic comments until September 10, 2004.

ADDRESSES: The public meeting on Monday, July 19, 2004, will be held at the Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740–3835. The public meeting on Wednesday, July 21, 2004, will be held at the Marriott Chicago Downtown, 540 North Michigan Ave., Chicago, IL 60611. The public meeting on Thursday, August 5, 2004, will be held at the County of Santa Clara, Department of Environmental Health, 1555 Berger Dr., San Jose, CA 95112–2716

You may submit comments, identified with Docket No. 2004N–0230, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.*

Follow the instructions for submitting comments.

- Agency Web site: *http://www.fda.gov/dockets/ecomments.*

Follow the instructions for submitting comments on the agency Web site.

- E-mail: *fdadockets@oc.fda.gov.*

Include Docket No. 2004–0230 in the subject line of your e-mail message.

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (For paper; disk, or CD–ROM submissions): Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/dockets/ecomments*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/dockets/ecomments* and/or the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Peter J. Vardon, Center for Food Safety and Applied Nutrition (HFS–726), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD, 301–436–1830, FAX: 301–436- 2626, or e-mail: *pvardon@cfsan.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA last revised its CGMP regulations for food in part 110 (21 CFR part 110) in 1986 (51 FR 22458, June 19, 1986). The primary purpose of the revision was to establish new, updated, or more detailed provisions concerning food industry personnel; plants and grounds; sanitary facilities, controls, and operations; equipment and utensils, warehousing, and distribution; and natural or unavoidable defect levels. FDA designed the revised CGMP regulations to help ensure the safe and sanitary manufacturing, processing, and holding of food for human consumption.

In the almost 20 years since the food CGMPs were revised, the food industry has undergone considerable change, and the agency believes that it is now time to revisit these regulations and determine appropriate revisions to better ensure a safe and sanitary food supply. FDA believes that a good first step is to obtain the views of the industry and the public generally by holding a series of public meetings. The three public meetings are intended to provide interested parties an opportunity to comment on what revisions to the CGMPs FDA should consider. The meetings are also intended to fulfill part of the outreach requirement of the Small Business Regulatory Enforcement Fairness Act of 1996.

FDA has drafted the questions set out in this document to help focus comments presented at the public meetings or otherwise communicated to the agency. One area of particular agency focus is potential hazards in the food supply. Generally speaking, there are three categories of hazards that may be present during the production or warehousing of food: Physical hazards (such as the presence of glass fragments in food), chemical hazards (such as the unintended presence of a cleaning solution in food), and microbiological

hazards (such as the presence of *Listeria monocytogenes* in ready-to-eat foods).

In responding to the questions set out in this document, please address, to the extent you are able, each of the three types of hazards discussed in the previous paragraph. FDA is particularly interested in receiving comments about food manufacturing practices and other controls used by small food manufacturing and processing entities.

II. Questions

In general, how should the CGMP regulations in part 110 be revised or otherwise modernized? Please describe, generally, the short comings of the current regulations.

1. Which practices specified in current part 110 are most effective at preventing each type of food hazard? Which practices are least effective at such prevention?

2. In today's food manufacturing environment, what conditions, practices, or other factors are the principal contributors to each type of food hazard?

3. If the CGMP regulations were revised, which type or types of food hazards could be most readily prevented through CGMP-type controls?

4. Are there preventive controls, in addition to those set out in part 110, needed to reduce, control, or eliminate each of the three types of food hazards? If yes, please identify the specific hazard and the particular controls, that would reduce, control, or eliminate the hazard.

5. What concepts or underlying principles should guide FDA's adoption of new preventive controls?

6. How should the effectiveness of preventive controls for each of the three types of hazards be most accurately measured?

7. In today's food manufacturing environment, what are the principal contributors to the presence of undeclared allergens in food? For example, do labeling errors or cross-contamination contribute? Which preventive controls could help reduce, control, or eliminate the presence of undeclared allergens in food?

8. Are there existing quality systems or standards (such as international standards) that FDA should consider as part of the agency's exploration of food CGMP modernization? Please identify these systems or standards and explain what their consideration might contribute to this effort.

9. There is a broad variation within the food manufacturing and processing industry, including variations in size of establishments, the nature of the food produced, the degree to which the food is processed, and the vulnerability of a particular operation to physical, chemical, or microbial hazards. How, if at all, should the CGMP regulations be revised to take into account such variation? For example, should there be different sets of preventive controls for identifiable segments of the food industry, such as different storage temperature limits?

10. There are a number of measures, procedures, and programs that help to ensure that preventive controls are carried out adequately. These include the following items:

- Training programs for managers and/or workers;
- Audit programs;
- Written records, e.g., batch records, sanitation records;
- Validation of control measures;
- Written sanitation standard operating procedures;
- Food label review and control program; and
- Testing of incoming raw materials, in process materials, or finished products.

Which (if any) of these should be required practices for food and manufacturers and why? Which (if any) of these should be recommended practices for food manufacturers and processors and why?

11. Are there preventive controls in addition to those already set out in part 110 for food distributors, wholesalers, and warehousers that are needed to help ensure the safe and sanitary holding of food? If yes, please identify the controls by hazard and sector of the industry.

III. Registration

You should register for any of the meetings by fax or e-mail (see **FOR FURTHER INFORMATION CONTACT**). For security reasons and due to space limitations, we recommend that you register at least 5 days prior to the meeting you wish to attend. Registration will be accepted on a space-available basis. You may register until close of business on July 14, 2004, for the College Park meeting, close of business on July 16, 2004, for the Chicago meeting, and close of business on July 30, 2004, for the San Jose meeting. If you need special accommodations due to a disability, please inform the contact person at least 7 days in advance (see **FOR FURTHER INFORMATION CONTACT**). Please include your name, title, firm name, address, telephone number, and e-mail address (if available) when you register. FDA encourages individuals or firms with relevant data or information to present such information at the meeting or in written comments to the record. If you would like to make oral comments at one of the meetings, please specify your interest in speaking when you register. The amount of time for each oral presentation may be limited due to the number of requests to speak.

IV. Transcripts

A transcript will be made of the proceedings of each meeting. You may request a copy of a meeting transcript in writing from FDA's Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 30 working days after the public meetings at a cost of 10 cents per page. The transcript of each public meeting and all comments submitted will be available for public examination at the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

V. Comments

In addition to presenting oral comments at a public meeting, interested persons may submit (see **ADDRESSES**) written or electronic comments on the subject of these meetings. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 29, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–15197 Filed 6–30–04; 1:38 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Parts 121 and 123

[Public Notice 4754]

Z–RIN 1400–ZA–11

Amendment to the International Traffic in Arms Regulations: United States Munitions List and Part 123

AGENCY: Department of State.

ACTION: Final Rule.

SUMMARY. The Department of State, in consultation with the Departments of Defense and Commerce, is amending the text of Category XIV of the United States Munitions List (USML) as published in the **Federal Register** on November 27, 2002 to clarify the continuity of coverage for equipment and its

components, parts, accessories, and attachments specifically designed or modified for military operations and compatibility with military equipment and employed for the dissemination, dispersion or testing of agents controlled by the category.

In addition, to reflect the March 29, 2004 accession to the North Atlantic Treaty Organization (NATO) of seven European countries, section 123.27 of the International traffic in Arms Regulations (ITAR) is being amended to add Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia.

DATES: *Effective:* July 2, 2004.

ADDRESSES: Interested parties are invited to submit written comments to the Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Regulatory Change, USML Part 121, Category XIV, 12th Floor, SA–1, Washington DC 20522–0112. E-mail comments may be sent to: *DTCPResponseTeam@state.gov*. Comments will be accepted at any time. Persons with access to the Internet may also view this notice by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm*.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Tomchik, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–2799 or FAX (202) 261–8199. ATTN: Regulatory Change, USML Part 121, Category XIV.

SUPPLEMENTARY INFORMATION:

1. *Category XIV.* Since the publication on November 27, 2002 (67 FR 70839) of the revision to this category of the USML (22 CFR Part 121), questions have arisen regarding continuity of coverage for equipment and its components, parts, accessories, and attachments specifically designed or modified for military operations and compatibility with military equipment and employed for the dissemination, dispersion, or testing of agents controlled by the category. The text published on November 27 could be misconstrued as a diminution in the scope of controls for such equipment. To clarify that coverage under the USML for such equipment was and remains continuous, paragraph (f)(1) is amended to specify that the control embraces the tear gases and riot control agents specified in paragraph (d) and the defoliants specified in paragraph (e) of Category XIV.

2. *Section 123.* On March 29, 2004 seven European countries deposited in Washington, DC the instruments of accession by which those countries became formal members of the North Atlantic Treaty Organization (NATO). The seven countries in question are Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia. Accordingly, ITAR section 123.27 (22 CFR 123.27) is being amended to add these countries to the enumerated list of NATO allies of the United States.

Regulatory Analysis and Notices

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1996. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this rule does not have sufficient federalism implications to warrant application of consultation provisions of Executive Orders 12372 and 13132.

List of Subjects in 22 CFR Parts 121 and 123

Arms and munitions, Exports.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Parts 121 and 123 are amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

■ 1. The authority citation for Part 121 continues to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2278, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261, 112 Stat. 1920.

■ 2. In § 121.1, Category XIV—Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment is amended by revising paragraphs (f) introductory text and (f)(1) to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category XIV—Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment

* * * * *

*(f) Equipment and its components, parts, accessories, and attachments specifically designed or modified for military operations and compatibility with military equipment as follows:

(1) The dissemination, dispersion or testing of the chemical agents, biological agents, tear gases and riot control agents, and defoliants listed in paragraphs (a), (b), (d), and (e), respectively, of this category;

* * * * *

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

■ 3. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, and 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261, 112 Stat. 1920.

■ 4. Section 123.27 is amended by revising paragraph (a)(1) to read as follows:

§ 123.27 Special licensing regime for export to U.S. allies of commercial communications satellite components, systems, parts, accessories, attachments and associated technical data.

(a) * * *

(1) The proposed exports or re-exports concern exclusively one or more countries of the North Atlantic Treaty Organization (Belgium, Bulgaria, Canada, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, The Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, United Kingdom, and the United States) and/or one or more countries which have been designated in accordance with section 517 of the Foreign Assistance Act of 1961 as a major non-NATO ally (and as defined further in section 644(q) of that Act) for purposes of that Act and the Arms Export Control Act (Argentina, Australia, Bahrain, Egypt, Israel, Japan, Jordan, Kuwait, New Zealand, the Philippines, Thailand, and the Republic of Korea).

* * * * *

Dated: June 14, 2004.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 04–15097 Filed 7–1–04; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 506 and 540

[BOP Docket No. 1091–F]

RIN 1120–AA86

Inmate Commissary Account Deposit Procedures

AGENCY: Bureau of Prisons, Justice.

ACTION: Final Rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) amends its regulations on how an inmate may receive funds from family, friends, and other sources. Under previous regulation, funds intended for any inmate's use were included in correspondence sent to the inmate or left with staff as part of visiting. Staff at the institution arranged for the deposit of these funds into the inmate's account. Under the new regulations, funds from family, friends, or other sources will no longer be sent to the inmate but will instead be sent directly to a centralized inmate commissary account in the form of a money order for receipt and posting. Under the new rule, we will not accept funds sent by family or friends to the inmate's location. Instead, we will return them to the sender, provided there is an adequate return address. We intend this amendment to provide for the more efficient processing of inmate funds.

DATES: This rule is effective August 2, 2004.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau adds new regulations (28 CFR Part 506) pertaining to inmate deposits and makes conforming amendments to the regulation on inmate correspondence (28 CFR 540.23). We published the proposed rule on this subject on April 23, 1999 (64 FR 20125). We published the previous provisions in § 540.23 in the **Federal Register** on October 1, 1985 (50 FR 40109).

What Does the New Rule Do?

This new rule establishes a centralized inmate funds collection process commonly referred to as "LockBox". The funds will be processed at the central location and then electronically transferred to the inmate's Commissary account at the location where the inmate is housed via an existing Trust Fund Wide Area Network. There is no additional cost for this transfer. The LockBox services are provided to the Bureau through an Interagency Agreement with the U.S. Treasury. Independent banks are not affected as all Commissary funds are required to be maintained in the U.S. Treasury. The inmate Trust Fund will pay for the LockBox services, depending on the volume of transactions, but no taxpayer money is involved.

Previous provisions on general correspondence allow an inmate, upon completing the appropriate form, to receive funds through the mail from family or friends or, on approval of the Warden, from other persons for crediting to the inmate's trust fund account. Previous provisions on visiting provide that the Warden may allow a visitor to leave money with a designated staff member for deposit in the inmate's commissary account. Institution staff were responsible for processing these funds.

Under the new rule, all inmate funds from family and friends must be sent directly to a centralized inmate commissary account. The deposit must be in the form of a money order and the envelope must not contain any enclosures intended for delivery to the inmate as any enclosure is subject to disposal.

We must receive deposits in the form of a money order. We will not accept personal checks, but will return them provided the check has adequate return address information. However, if we receive funds from other sources, such as tax refunds, dividends from stocks, or state benefits, we will forward them for deposit into the centralized inmate commissary account. Tax refunds, dividends from stocks, and state benefits are recognized as Treasury checks, and Bureau experience has shown that they have a much lower risk of cancellation (*e.g.*, "bouncing") than personal checks. Also, unlike personal checks, Treasury checks do not have a 15 day hold, so the inmates receive their funds immediately upon processing.

We previously managed our inmate accounting functions in a completely de-centralized fashion. Each institution operated separately and distinctly from one another, although each performed virtually identical functions, such as posting mail room collections to inmate accounts, making daily trips to the bank to deposit collections, establishing inmate accounts each time an inmate arrives at their current location, and transferring funds between institutions. We believe that having a centralized inmate commissary account will benefit inmates by allowing them immediate access to their funds.

Also, the centralized inmate commissary account will eliminate redundant work efforts, allow institutions complete access to detailed inmate account history, remove personal liability from institution staff related to handling of inmate funds, and enhance Bureau security by allowing centralized reporting and comparisons of sources of incoming funds and destination of outgoing funds across all institutions. The tremendous growth of the number of Bureau facilities coupled with new computer networking technology have made the current method of managing inmate funds outdated, inefficient, and costly.

Comments

One commenter asks if it is possible to have some type of savings account and transfer money from an inmate account to that bank savings account or a mutual fund. This commenter also asks how much money inmates are allowed to have in their inmate account.

Under current Bureau policy, (Program Statement 2000.02, Accounting Management Manual) we encourage inmates to participate in a continuous savings program. The savings may be in the form of a passbook savings account, certificate of deposit, any money market accounts, or U.S. Savings Bonds. Inmates are not limited in the amount that may be maintained in their inmate account.

Another commenter makes the following recommendations:

1. Clarify in the rule language what type of money order is permissible (postal Money Order, American Express Money Order, etc).

Our Response: Because we need the flexibility to quickly add different types of money orders to a list of permissible money orders, we choose not to set forth the list in rule language. However, the types of money orders processed will include U.S. postal money orders; domestic money orders (*e.g.*, American Express Money Order); postal money orders issued by Anguilla, Antigua and Barbuda, Bahamas, Barbados, Belize, British Virgin Islands, Cornado, Dominica, Grenada, Montserrat, St. Christopher, Nevis, St. Lucia, and St. Vincent and the Grenadines; and Canadian postal money orders—if they are addressed to a payee within the United States and the amount is expressed in United States currency.

2. The centralized location for the inmate accounts should be Bureau headquarters.

Our Response: We do not have the capability at Bureau headquarters to properly process inmate funds. We will select an organization for collection and distribution of inmate funds that is capable of immediately processing incoming money orders and electronically dispersing the funds to the appropriate inmate deposit fund accounts.

3. Money orders should include inmate name and number.

Our Response: Section 506.2(a)(2) of the rules change specifies that the money order must be made out to the inmate's full name and complete register number.

4. Any funds received by institutions from other sources should be sent by registered mail on a daily basis from each institution and be accompanied by a list with the inmate name, number, and amount of the check.

Our Response: Bureau policy will address the process by which funds received at an institution will be forwarded or returned. Because information on this issue constitutes Bureau guidance to its staff at the institutions, this is more appropriately addressed in Bureau policy.

Another commenter had the following concerns:

1. The changes to the rule would cause confusion among families, friends and businesses regarding the proper procedures for sending money. The central receiving location may also lose money/money orders sent in for inmates.

Our Response: Actually, the rule would allow inmates quicker access to money orders. Money orders sent to the centralized collection location under the proper procedures will be electronically deposited into the inmate's account, allowing the inmate to have quicker access to those funds than current operational procedures permit.

2. The rule does not set forth a process for accepting checks from businesses that may be refunding money for items the inmate ordered but were not available.

Our Response: We will address refunds from businesses in corresponding Bureau policy.

3. The rule does not address how or when we will notify the inmate that we have received or rejected funds designated for their account.

Our Response: Because such details regarding notification constitute Bureau guidance to its staff at the institutions, this is more appropriately addressed in Bureau policy.

Another commenter stated that, since inmates receive money from families as gifts and often such mail contains cards, letters, and magazines, etc., the rule would have a chilling effect on familial contact and a reduction in familial monies to assist the inmates. This commenter is concerned that this reduction would decrease the ability of inmates to pay their COIF, fines and restitution which could impact state, local and tribal governments.

Currently, staff removes money from incoming mail and credits the inmate's account as appropriate. The new process described in the rules is different only in that money orders will go to a location other than where the inmate is physically incarcerated. It will still be credited to the inmate's account as appropriate, and inmates will actually be able to access newly-arrived funds more quickly because of the electronic depositing system.

Also, the Bureau's responsibility to its inmates requires that inmates have quick and easy access to deposited funds. We do not believe that this rule will have a "chilling effect" on familial communications because it will not hamper families' abilities to send cards to inmates or continue any other previously existing form of personal communication. Families may communicate with inmates using the same procedures as existed before this rule. This rule merely addresses how money may be sent so that inmates may receive it more quickly.

Another commenter is concerned that the Bureau will only allow funds from family and friends in the form of a money order. The commenter states that preventing personal checks would create a hardship for relatives or friends who may be elderly or infirm or who have busy schedules. The time and hassle of waiting in line at the post office (or bank) is too much for some people because of time constraints or physical limitations.

The primary focus of this rule is on the efficient management of inmate funds. Relatives and friends may easily, without "time and hassle," get money orders from the U.S. Postal Service, banks, and convenience stores or supermarkets. Money orders will be more convenient for the inmate, since electronic depositing will allow funds to be available immediately. By contrast, domestic personal checks, once received, have a 15-day hold before an inmate may access those funds and non-domestic and foreign negotiable instruments have a 30–60-day hold before an inmate may access those funds.

There are several other reasons for our decision not to accept personal checks. Accepting personal domestic and foreign checks increases the risk of accepting insufficient funds, processing canceled checks and forged checks, etc. Approximately three percent of all negotiable instruments we received for deposit into inmate accounts are domestic checks. Of those, approximately 600 per year are determined to have insufficient funds. Up to 60 hours of staff time/resources is expended for each check we accept that must later be returned for insufficient funds.

Under the previous system, unless otherwise notified of insufficient funds by the U.S. Treasury, funds are automatically posted to the inmate's Commissary account after the holding period has elapsed. The inmate may then spend the funds. However, if a check posted to an inmate account is later returned by the U.S. Treasury on a debit voucher for insufficient funds (found to be a "bad check"), the amount of the returned check is immediately removed from the inmate account. This can occur even after the funds have been in the inmate's account for 30 days or more.

If the inmate has insufficient funds when we seek to remove money placed there as a result of a bad check, all of the inmate's available funds are withdrawn and the inmate's account may reflect a negative balance for the uncollected amount. Furthermore, any future funds the inmate receives will be applied toward the negative balance resulting from the bad check until full reimbursement has been collected.

A total of 97% of debit vouchers received are received after the funds have been posted. It was found that an inmate's accounts may have a negative balance from two to 24 months. When the inmate carries a negative balance, staff must ensure that all funds posted to his account are removed as partial payment for the bad check, and staff must generate several accounting entries to the Standard General Ledger (SGL). This process may prove to be extremely time consuming. Although the total time period to process a debit voucher should be no greater than .75 hours, staff resources to collect and process partial payments on one lengthy case may easily exceed 48 hours.

If the inmate is released from custody with a negative balance, or if a debit voucher is received from the U.S. Treasury after the inmate's release, we must initiate debt collection procedures under the Debt Collection Act. Collection procedures include immediate contact with the former inmate, notifying them of the debt owed, with subsequent follow-up letters requesting reimbursement of the cancelled negotiable instrument. This

initial process may take from 30 to 90 days to complete, once more consuming staff resources. As the time for the letters written, routed, and phone calls made, are accounted for, this process may use eight hours of resources.

If all attempts to collect the debt are unsuccessful, staff must contact the appropriate Regional Office, which must make a determination to immediately refer the case to the Central Office Debt Management Officer, or initiate correspondence to the debtor from the Deputy Regional Director. If debt collection is still unsuccessful, then the case will be referred to the Debt Management Officer located in the Central Office. Approximately four hours of resources are used in this process.

The Central Office Debt Management Officer will then recommend final disposition of the debt, either referring the debt to the IRS Offset Program or recommending a write-off of the debt.

Collection of debts from former inmates can be extremely time consuming and unsuccessful. Under the new rule, by not accepting domestic checks, we will greatly reduce the loss of money, staff time and resources from unsuccessful collection attempts.

Executive Order 12866

The Director certifies that this rule is a "significant regulatory action" under section 3(f) of Executive Order 12866 and therefore was reviewed by the Office of Management and Budget for review.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by *804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Parts 506 and 540

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we add a new part 506 to 28 CFR, chapter V, subchapter A, and amend 28 CFR part 540 as follows.

Subchapter A—General Management and Administration

■ 1. Add a new Part 506 to read as follows:

PART 506—INMATE COMMISSARY ACCOUNT

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 31 U.S.C. 1321.

§ 506.1 What is the purpose of individual inmate commissary accounts?

The purpose of individual inmate commissary accounts is to allow the Bureau to maintain inmates' monies while they are incarcerated. Family, friends, or other sources may deposit funds into these accounts.

§ 506.2 How may family, friends, or other sources deposit funds into an inmate commissary account?

(a) *Family and friends* must mail deposits to the centralized inmate commissary account at the address we provide.

(1) The deposit envelope must not contain any enclosures intended for delivery to the inmate. We may dispose of any enclosure.

(2) The deposit must be in the form of a money order made out to the inmate's full name and complete register number. We will return checks to the sender provided the check contains an adequate return address.

(b) *Other sources*, (such as tax refunds, dividends from stocks, or state benefits) must be forwarded for deposit to the centralized inmate commissary account.

Subchapter C—Institutional Management

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

■ 1. Revise the authority citation for 28 CFR part 540 to read as follows:

Authority: 5 U.S.C. 301, 551, 552A, 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509.

■ 2. Revise § 540.23 to read as follows:

§ 540.23 Inmate funds received through the mails.

Except as provided for in part 506 of this chapter, funds enclosed in inmate correspondence are to be rejected. Deposits intended for the inmate's commissary account must be mailed directly to the centralized commissary account (see 28 CFR part 506).

■ 3. Revise § 540.51(h)(3) to read as follows:

§ 540.51 Procedures.

* * * * *

(h) * * *

(3) The visiting room officer may not accept articles or gifts of any kind for an inmate, except packages which have had prior approval by the Warden or a designated staff member.

* * * * *

[FR Doc. 04–15071 Filed 7–1–04; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 352

Offering of United States Savings Bonds, Series HH

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The offering of Series HH Savings Bonds will terminate at the close of business on August 31, 2004.

DATES: Effective August 31, 2004.

ADDRESSES: You can download this final rule at the following Internet addresses: *http://www.gpoacess.gov* or *http://www.publicdebt.treas.gov.*

FOR FURTHER INFORMATION CONTACT:

Elisha Whipkey, Director, Division of Program Administration, Office of Securities Operations, Bureau of the Public Debt, at (304) 480–6319 or *elisha.whipkey@bpd.treas.gov.*

Susan Klimas, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *susan.klimas@bpd.treas.gov.*

Dean Adams, Assistant Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *dean.adams@bpd.treas.gov.*

Edward Gronseth, Deputy Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *edward.gronseth@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION: After August 31, 2004, owners of Series E or EE bonds will no longer be able to exchange them for Series HH bonds, and owners of matured Series H or Series HH bonds will not be able to reinvest in Series HH bonds. Series HH bonds issued through August 2004 will continue to earn interest until they reach final maturity 20 years after issue. We are terminating the offering due to the high cost of exchanges in relation to the relatively low volume of transactions.

Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

This final rule relates to matters of public contract and procedures for United States securities. The notice and public procedures requirements and delayed effective date requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply.

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects in 31 CFR Part 352

Bonds, Government securities.

■ Accordingly, for the reasons set out in the preamble, 31 CFR Chapter II, Subchapter B, is amended as follows:

PART 352—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES HH

■ 1. The authority citation for Part 352 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

■ 2. Revise § 352.0 to read as follows:

§ 352.0 Offering of bonds.

The Secretary of the Treasury offered to the people of the United States, United States Savings Bonds of Series HH in exchange for eligible United States Savings Bonds of Series E and EE and United States Savings Notes (Freedom Shares). This offering is being withdrawn and will terminate at the close of business on August 31, 2004.

■ 3. Amend § 352.2 as follows: in the first sentence of paragraph (a) remove the words "are issued" and add in their place the words "were issued"; in paragraph (b) remove the words "are issued" and add in their place the words "were issued", and remove the words "and are"; in the second sentence of paragraph (c) remove the word "is" and add the word "was".

§ 352.4 [Amended]

■ 4. Amend § 352.4 by removing the word "are" and adding in its place the word "were".

■ 5. Revise § 352.5 to read as follows:

§ 352.5 Authorized issuing and paying agents.

Series HH bonds were issued and may be redeemed only by Federal Reserve Banks (see § 352.13) and the Bureau of the Public Debt.

■ 6. Revise § 352.7 to read as follows:

§ 352.7 Issues on exchange.

(a) *Securities eligible for exchange.* Prior to the close of business on August 31, 2004, owners were permitted to exchange United States Savings Bonds of Series E and EE and United States Savings Notes (Freedom Shares) at their current redemption values for Series HH bonds. Series E bonds and savings notes remained eligible for exchange for a period of one year from the month in which they reached final maturity. Series EE bonds issued on January 1, 2003, or earlier, became eligible for exchange six months after their issue dates. Series EE bonds issued on February 1, 2003, or thereafter, became eligible for exchange 12 months after their issue dates.

(b) *Basis for issue.* Series HH bonds were issued on exchange by an authorized issuing agent upon receipt of a properly executed exchange application with eligible securities, and additional cash, if any, and any supporting evidence that was required under the regulations. If eligible securities were submitted directly to a Federal Reserve Bank referred to in § 351.13, each was required to bear a properly signed and certified request for payment. Checks in payment of additional cash needed to complete a transaction (see paragraph (d) of this section) were required to be drawn to the order of the Federal Reserve Bank.

(c) *Role of financial institutions.* Department of the Treasury Circular No. 750, current revision (31 CFR part 321), authorizes financial institutions qualified as paying agents for savings bonds and notes to redeem eligible securities presented for exchange and to forward an exchange application and full payment to a Federal Reserve Bank referred to in § 351.13 for the issue of Series HH bonds. The securities redeemed on exchange by such an institution were required to be securities that it is authorized to redeem for cash.

(d) *Computation of issue price.* The total current redemption value of the eligible securities submitted for exchange in any one transaction was required to be $500 or more. If the current redemption value was an even multiple of $500, Series HH bonds were required to be issued in that exact amount. If the current redemption value exceeded, but was not an even multiple of $500, the owner had the option either:

(1) To add the cash necessary to bring the amount of the application to the next higher multiple of $500, or

(2) To receive a payment to reduce the amount of the application to the next lower multiple of $500.

(e) *Registration.* A Series HH bond issued on exchange was permitted to be registered in any form authorized in subpart B of Circular No. 3–80, subject to the following restrictions:

(1) If the securities submitted for exchange were in single ownership form, the owner was required to be named as owner or first-named coowner on the Series HH bonds. A coowner or beneficiary was permitted to be named.

(2) If the securities submitted for exchange were in coownership form, and one coowner was the "principal coowner", that person was required to be named as owner or first-named coowner on the Series HH bonds. A coowner or beneficiary was also permitted to be named. The "principal coowner" was the coowner who

purchased the securities presented for exchange with his or her own funds, or received them as a gift, inheritance or legacy, or as a result of judicial proceedings, and had them reissued in coownership form, provided he or she had received no contribution in money or money's worth for designating the other coowner on the securities.

(3) If the securities presented for exchange were in coownership form, and both coowners shared in their purchase or received them jointly as a gift, inheritance, or legacy or as a result of judicial proceedings, both persons were required to be named as coowners on the Series HH bonds.

(4) If the securities presented for exchange were in beneficiary form, the owner was required to be named on the Series HH bonds as owner or first-named coowner. If the owner was deceased, a surviving beneficiary was required to be named as owner or first-named coowner. In either case, a coowner or beneficiary was permitted to be named.

(f) *Issue date.* Series HH bonds issued on exchange were dated as of the first day of the month in which the eligible securities presented for exchange were redeemed by an authorized paying agent, as evidenced in the payment stamp on the securities and the exchange application.

(g) *Tax-deferred exchanges.* (1) Continuation of tax deferral. Pursuant to the provisions of the Internal Revenue Code of 1954, as amended, an owner who had not been reporting the interest on his or her Series E or EE bonds and savings notes on an accrual basis for Federal income tax purposes, and who exchanged those securities for Series HH bonds, was permitted to continue to defer reporting the interest on the securities exchanged until the taxable year in which the Series HH bonds received in the exchange reach final maturity, are redeemed, or are otherwise disposed of, whichever is earlier. A reissue transaction that affects any of the persons required to be named on the Series HH bonds, as set forth in paragraph (e) of this section, may result in termination of the tax deferral privilege.

(2) *Tax deferral legend.* Each bond issued in a tax-deferred exchange bore a legend showing how much of its issue price represented interest on the securities exchanged. This interest must be treated as income for Federal income tax purposes and reported in accordance with paragraph (g)(1) of this section.

(3) *Reporting of interest paid to owner.* To the extent that it represented interest earned on the securities presented for exchange, an amount paid to an owner in accordance with paragraph (d) of this section was reportable as income for Federal income tax purposes for the year in which it was paid. Pursuant to 26 CFR 1.6049.4, a paying agent was required to report interest income of $10 or more included in any amount paid in an exchange transaction to the payee and to the Internal Revenue Service on Form 1099–INT or an approved substitute. A separate report was permitted to be made for each exchange transaction in which interest in the amount of $10 or more was paid, or all interest paid in both cash redemption and exchange transactions was permitted to be aggregated and reported annually should the total amount be $10 or more.

(h) *Exchanges without tax deferral.* The rules prescribed for exchanges under paragraphs (a) through (f) of this section also applied to exchanges by owners who report the interest earned on their bonds of Series E and EE and savings notes annually for Federal income tax purposes, or elect to report all such interest that was not previously reported for the taxable year of the exchange. Series HH bonds issued in a nontax-deferred exchange were required to show a "0" in the tax-deferral legend.

■ 7. Amend § 352.8 as follows: revise the first sentence of paragraph (a) to read as set forth below; in the second sentence of paragraph (a) remove the words "may not" and add in their place the words "was not permitted to", remove the word "reach" and add in its place the word "reached", and remove the word "are" and add in its place the word "were"; in paragraph (b) remove the words "will be" and add in its place the word "were" for the words both places that the words appear.

§ 352.8 Reinvestment of matured Series H bonds.

(a) *General.* Prior to the close of business on August 31, 2004, the proceeds of matured Series H and HH bonds, whether purchased for cash or issued in exchange for other securities, were permitted to be reinvested in Series HH bonds. * * *

* * * * *

§ 352.9 [Amended]

■ 8. Amend § 352.9 as follows: in the first sentence, remove the words "will deliver" and add in their place the word "delivered"; in the second sentence, remove the words "will be" and add in their place the word "were"; in the third sentence, remove the words "will be" and add in their place the word "were".

§ 352.11 [Amended]

■ 9. Amend § 352.11 as follows: in the first sentence, remove the word "reserves" and add in its place the word "reserved", and remove the word "is" and add in its place the word "was"; in the final sentence, remove the word "is" and add in its place the word "was".

Dated: June 9, 2004.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 04–13900 Filed 7–1–04; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–04–028]

RIN 1625–AA00

Safety Zones: Fireworks Displays in the Captain of the Port Portland Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones on the waters located in the Portland, Oregon, Captain of the Port (COTP) Zone during fireworks displays. The COTP is taking this action to safeguard watercraft and their occupants from safety hazards associated with these displays. Entry into these safety zones is prohibited unless authorized by the COTP.

DATES: This rule is effective from 10 p.m. July 4, 2004, through 10:30 p.m. July 24, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are available for inspection or copying at the U.S. Coast Guard MSO/Group Portland, 6767 N. Basin Avenue, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Belen Audirsch, c/o Captain of the Port, Portland, 6767 N. Basin Avenue, Portland, Oregon 97217, (503) 240–9301.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Safety zones for these events are being submitted through the normal rulemaking process for 2005. Following normal notice and comment procedures

for the events occurring in 2004 would disallow the publishing of the final rule until after the dates of the events. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest since immediate action is necessary to ensure the safety of vessels and spectators gathering in the vicinity of the various fireworks launching barges and displays.

Background and Purpose

The Coast Guard is establishing temporary safety zones to allow for safe fireworks displays indicated in section 2(a)(1–11) of this temporary final rule. All events occur within the Portland, Oregon, Captain of the Port (COTP) Zone. These events may result in a number of vessels congregating near fireworks launching barges and sites. The safety zones are needed to protect watercraft and their occupants from safety hazards associated with fireworks displays. These safety zones will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal and local agencies.

Discussion of Rule

In response to safety concerns, this rule will control vessels, personnel and individual movements in a regulated area surrounding the firework events indicated in § 165.T13–008(a)(1)–(11) of this temporary final rule. Entry into these zones is prohibited unless authorized by the Captain of the Port, Portland, or his designated representative. Coast Guard personnel will enforce these safety zones. The Captain of the Port may be assisted by other federal and local agencies.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. This rule is not "significant" under the regulatory policies and procedures of the Department of Homeland Security. The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures act of DHS is unnecessary. This expectation is based on the fact that the regulated areas established by this rule will encompass small portions of rivers in the COTP Zone on different dates, all in the evening when vessel traffic is low.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Willamette River, Columbia River, and Siuslaw River during the times and dates mentioned under 2(a)(1–11) of this Temporary Final Rule. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect no more than one hour during eleven evenings when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this temporary final rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion is provided for temporary safety zones of less than one week in duration.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Record Keeping Requirements, Security Measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A temporary § 165.T13–008 is added to read as follows:

§ 165.T13–008 Safety Zones for fireworks events in the Captain of the Port Portland Zone.

(a) *Safety zones.* The following areas are designated safety zones:

(1) *City of Milwaukie Celebration Fireworks Display, Milwaukie, OR:*

(i) *Location.* All water of the Willamette River enclosed by a line connecting the following points: 45°26′41″ N, 122°38′46″ W; following the shoreline to 45°26′17″ N, 122°38′36″ W; then west to 45°26′17″ N, 122°38′55″ W; following the shoreline to 45°26′36″ N, 122°38′50″ W; then back to the point of origin.

(ii) *Enforcement period.* 10 p.m. to 10:30 p.m. on July 24, 2004.

(2) *Gladstone Celebration Fireworks Display, Gladstone, OR:*

(i) *Location.* All water of the Willamette River enclosed by a line connecting the following points: 45°22′29″ N, 122°36′42″ W; following the shoreline to 45°22′23″ N, 122°36′23″ W; then west to 45°22′14″ N, 122°36′26″ W; following the shoreline to 45°22′24″ N, 122°36′44″ W; then back to the point of origin.

(ii) *Enforcement period.* 10 p.m. to 10:30 p.m. on July 4, 2004.

(3) *Oaks Park July 4th Celebration, Portland, OR.*

(i) *Location.* All water of the Willamette River enclosed by a line connecting the following points: 45°28′26″ N, 122°39′43″ W; following the shoreline to 45°28′10″ N, 122°39′54″ W; then west to 45°28′41″ N, 122°40′06″ W; following the shoreline to 45°28′31″ N, 122°40′01″ W; then back to the point of origin.

(ii) *Enforcement period.* 9:45 p.m. to 10:30 p.m. on July 4, 2004.

(4) *Fort Vancouver 4th of July Celebration, Vancouver, WA.*

(i) *Location.* All water of the Columbia River enclosed by a line connecting the following points: 45°31′16″ N, 122°40′18″ W; following the shoreline to 45°36′55″ N, 122°39′11″ W; south to 45°35′28″ N, 122°39′19″ W; following the shoreline to 45°36′52″ N, 122°40′32″ W, then back to the point of origin.

(ii) *Enforcement period:* 10 p.m. to 10:50 p.m. on July 4, 2004.

(5) *St. Helens 4th of July, St. Helens, OR.*

(i) *Location.* All water of the Columbia River extending out to a 1200-foot radius from the barge centered at 45°51′57″ N, 122°47′02″ W.

(ii) *Enforcement period:* 10 p.m. to 10:30 p.m. on July 4, 2004.

(6) *East County 4th of July Fireworks, Gresham, OR.*

(i) *Location.* All water of the Columbia River enclosed by a line connecting the following points: 45°32′29″ N, 122°47′32″ W; following the shoreline to 45°33′45″ N, 122°26′54″ W; then south to 45°33′29″ N, 122°26′37″ W; following the shoreline to 45°33′29″ N, 122°27′32″ W; back to the point of origin.

(ii) *Enforcement period:* 10 p.m. (PDT) to 10:30 p.m. (PDT) on July 4, 2004.

(7) *City of Cascade Locks 4th of July, Cascade Locks, OR.*

(i) *Location.* All water of the Columbia River extending out to a 2000′ radius from the launch site at 45°40′16″ N, 122°53′38″ W.

(ii) *Enforcement period:* 10 p.m. to 10:30 p.m. on July 4, 2004.

(8) *Arlington Chamber of Commerce Fireworks, Arlington, OR.*

(i) *Location.* All water of the Columbia River extending out to a 500-foot radius from the launch site at 45°43′23″ N, 122°12′08″ W.

(ii) *Enforcement period:* 10 p.m. to 10:20 p.m. on July 4, 2004.

(9) *Western Display 4th of July Party, Vancouver, WA.*

(i) *Location.* All water of the Columbia River extending out to a 500-foot radius from the launch site at 45°35′46″ N, 122°32′22″ W.

(ii) *Enforcement period:* 10 p.m. to 10:20 p.m. on July 4, 2004.

(10) *Ilwaco July 4th Committee Fireworks, Ilwaco, WA.*

(i) *Location.* All water of the Columbia River extending out to a 700-foot radius from the launch site at 46°18′17″ N, 124°01′55″ W.

(ii) *Enforcement period:* 10 p.m. to 10:30 p.m. on July 4, 2004.

(11) *Florence Chamber 4th of July, Florence, OR.*

(i) *Location.* All water of the Siuslaw River enclosed by a line connecting the following points: 43°57′58″ N, 124°06′29″ W; following the shoreline to 43°58′08″ N, 124°05′42″ W; then south to 43°57′53″ N, 124°05′31″ W; following the shoreline to 43°57′48″ N, 124°06′29″ W; back to the point of origin.

(ii) *Enforcement period:* 10 p.m. to 10:30 p.m. on July 4, 2004.

(b) Regulations. In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

Dated: June 25, 2004.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland, Oregon.

[FR Doc. 04–15034 Filed 7–1–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ66–273, FRL–7776–2]

Approval and Promulgation of Implementation Plans; New Jersey 1-hour Ozone Control Programs

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a request from New Jersey to revise its State Implementation Plan to incorporate revisions to Subchapter 16 "Control and Prohibition of Air Pollution by Volatile Organic Compounds." These revisions relate to the control of volatile organic compounds from mobile equipment repair and refinishing operations, solvent cleaning operations and refueling of motor vehicles at gasoline service stations. The intended effect is to reduce the emissions of volatile organic compounds (VOC) and thereby reduce ozone concentrations in the lower atmosphere.

DATES: *Effective Date:* This rule will be effective August 2, 2004.

ADDRESSES: Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection and Energy, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Paul Truchan, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3711 or *truchan.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA Taking Today?

EPA is approving a revision to New Jersey's ozone State Implementation Plan (SIP) submitted on June 4, 2003. This SIP incorporates amendments to Title 7, Chapter 27, "Subchapter 16 Control and Prohibition of Air Pollution from Volatile Organic Compounds" which was adopted on April 30, 2003. This adoption was published in the New Jersey Register on June 2, 2003 and became effective on June 29, 2003. New Jersey amended Subchapter 16 to include revisions to three control programs: Solvent cleaning operations, mobile equipment repair and refinishing operations, and gasoline transfer operations. The Subchapter 16 amendments are applicable to the entire State of New Jersey. The reader is referred to the proposed rulemaking (November 21, 2003, 68 FR 65646) for additional details.

II. What Comments Were Received and How Has EPA Responded to Them?

EPA received one comment on the proposal. The commenter stressed the importance of the training provisions for the mobile equipment repair and refinishing operations. The commenter further stated that enforcement of the training requirement is necessary and that the trainees should learn the course material and not just sit in a classroom.

Both EPA and the New Jersey Department of Environmental Protection recognize the importance and benefit of having a trained workforce. A trained workforce can minimize the emissions VOCs and maintain peak efficiency by operating and servicing equipment according to equipment manufacturers instructions. Accordingly, New Jersey specifically included the requirement (Subchapter 16, 16.12(i)) in the amendments to the rule. The provision requires the owner or operator of the facility to ensure that "any one who applies coatings at the mobile equipment repair and refinishing facility has completed training in the proper use and handling of the following [equipment] in order to minimize the emission of air contaminants.* * *" Since this will also become a requirement of the SIP, both the State and EPA will have enforcement authority. When New Jersey enforcement personnel inspect an affected facility they will check training records to insure workers operating the equipment and using solvents have been properly trained. Failure of equipment operators to comply with proper techniques would provide a basis for an enforcement citation. Failure to have a trained work force or keep accurate training records would be grounds for a facility and/or its owner to be issued a citation and be put on a compliance plan to insure the provisions have been carried out. Therefore, EPA is confident that New Jersey intends to enforce this provision as it would any other provision in its adopted regulations. In addition, by approving this regulations into the SIP, EPA can also enforce these provisions.

III. What Role Does This Rule Play in the Ozone SIP?

When EPA evaluated New Jersey's 1-hour ozone attainment demonstrations, EPA determined that additional emission reductions were needed for the State's two severe nonattainment areas in order for the State to attain the 1-hour ozone standard with sufficient surety (December 16, 1999, 64 FR 70380). EPA provided that the States in the Ozone Transport Region could achieve these emission reductions through regional control programs. New Jersey decided to participate with the other States in the Northeast in an Ozone Transport Commission (OTC) regulatory development effort which developed six model control measures. This rulemaking incorporates two of the OTC model control measures into the SIP: solvent cleaning operations, and mobile equipment repair and refinishing operations. The third control measure included in this rulemaking tightens controls on gasoline transfer operations. The emission reductions from these control measures will provide a portion of the additional emission reductions needed to attain the 1-hour ozone standard. The emission reductions from these measures will most certainly be necessary to provide for attainment of the 8-hour ozone standard.

IV. What Are EPA's Conclusions?

EPA has evaluated the submitted amendments for consistency with EPA regulations, EPA policy and guidance. The proposed control measures exceed the reasonably available control technology (RACT) level controls that were previously approved for these source categories. These new control programs will strengthen the SIP by providing for additional VOC emission reductions. Accordingly, EPA is approving the Subchapter 16 revisions as adopted on April 30, 2003.

V. 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 August 31, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 8, 2004.

Jane M. Kenny,

Regional Administrator, Region 2.

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

PART 52—[AMENDED]

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

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

Subpart FF—New Jersey

■ 2. Section 52.1570 is amended by adding new paragraph (c)(74) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

* * * * *

(74) Revisions to the State Implementation Plan submitted on June 4, 2003 and January 6, 2004 by the State of New Jersey Department of Environmental Protection that establishes control programs for mobile equipment repair and refinishing operations, solvent cleaning operations and refueling of motor vehicles at gasoline service stations.

(i) Incorporation by reference:

(A) Regulation Subchapter 16 of Title 7, Chapter 27 of the New Jersey Administrative Code, entitled "Control and Prohibition of Air Pollution from Volatile Organic Compounds," adopted on April 30, 2003 and effective on June 29, 2003.

(ii) Additional material:

(A) Letter from State of New Jersey Department of Environmental Protection dated June 4, 2003, requesting EPA approval of a revision to the Ozone SIP which contains amendments to the Subchapter 16 "Control and Prohibition of Air Pollution from Volatile Organic Compounds."

(B) Letter from State of New Jersey Department of Environmental Protection dated January 6, 2004 providing a compiled version of Subchapter 16 which include the amendments.

■ 3. Section 52.1605 is amended by revising the entry under Title 7, Chapter 27 for Subchapter 16 in the table to read as follows:

§ 52.1605 EPA-approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
* * * * *			
Title 7, Chapter 27			
* * * * *			
Subchapter 16, Control and Prohibition of Air Pollution from Volatile Organic Compounds.	June 29, 2003	July 2, 2004 [Insert FR page citation.]	
* * * * *			

[FR Doc. 04–14993 Filed 7–1–04; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA208–4215a; FRL–7780–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing a paragraph that was included as part of a direct final rule to approve Pennsylvania's SIP pertaining to source-specific volatile organic compounds (VOC) and nitrogen oxides (NO_X) RACT determination for two individual sources located in Pennsylvania. In the direct final rule published on May 24, 2004 (69 FR 29444), we stated that if we received adverse comments by June 23, 2004, the rule would be withdrawn and would not take effect. EPA subsequently received an adverse comment on one provision of that direct final rule and is withdrawing that provision. EPA will address the comment received in a subsequent final action based upon the proposed action also published on May 24, 2004 (69 FR 29444). EPA will not institute a second comment period on this action.

EFFECTIVE DATES: The addition of 40 CFR 52.2020 (c)(213)(i)(B)(*1*) published at 69 FR 29446 is withdrawn as of July 2, 2004.

FOR FURTHER INFORMATION CONTACT: Betty Harris, by telephone at: 215–814–2168, or by e-mail at: *harris.betty@epa.gov.*

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the Rules and Regulations section of the May 24, 2004 **Federal Register** (69 FR 29444). EPA received an adverse comment on only one source, namely, National Fuel Gas Supply Corporation, Roystone Compressor Station located in Sheffield Township, Warren County, Pennsylvania, and we are withdrawing only that provision. The other actions in the May 24, 2004 **Federal Register** are not affected.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 24, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

■ Accordingly, the addition of §§ 52.2020 (c)(213)(i)(B)(*1*) published at 69 FR 29446 is withdrawn as of July 2, 2004.

[FR Doc. 04–14990 Filed 7–1–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 151–0449w; FRL–7780–4]

Partial Withdrawal of Direct Final Rule Revising the California and Nevada State Implementation Plans, Ventura County Air Pollution Control District and Clark County Department of Air Quality Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: On May 20, 2004 (69 FR 29074), EPA published a direct final approval of a revision to the Nevada State Implementation Plan (SIP). This revision concerned Clark County Department of Air Quality Management Section 11, Ambient Air Quality Standards. On its own initiative, EPA is now withdrawing the May 20, 2004 direct final rule with respect to Section 11 to avoid confusion with a subsequent action in which EPA proposed approval of Section 11 along with other Clark County air pollution control rules relating to the local New Source Review program.

The other rule, Ventura County Air Pollution Control District Rule 34, approved in the May 20, 2004 direct final action, is not affected by this withdrawal and is incorporated into the SIP as of July 19, 2004, unless EPA receives adverse comments by June 21, 2004, as set forth in the May 20, 2004 direct final rule.

DATES: The addition of 40 CFR 52.1470(c)(46) published at 69 FR 29076 on May 20, 2004, is withdrawn as of July 2, 2004.

FOR FURTHER INFORMATION CONTACT: Julie Rose, EPA Region IX, (415) 947–4126, *rose.julie@epa.gov.*

SUPPLEMENTARY INFORMATION: Members of the public with comments on our proposed approval of Section 11 (*See* 69 FR 31056, June 2, 2004) should submit those comments in response to EPA's June 2, 2004 proposed action rather than the May 20, 2004 action which is the subject of this partial withdrawal.

List of Subjects in 40 CFR Part 52

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

Dated: June 17, 2004.

Nancy Lindsay,

Acting Regional Administrator, Region IX.

■ Accordingly, the addition of 40 CFR 52.1470(c)(46), published in the **Federal Register** on May 20, 2004 (69 FR 29074), which was to become effective on July 19, 2004, is withdrawn.

[FR Doc. 04–14991 Filed 7–1–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7835]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

DATES: *Effective Dates:* The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Mike Grimm, Mitigation Division, 500 C Street, SW., Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region IV				
North Carolina:				
Alliance, Town of, Pamlico County	370404	November 9, 1977, Emerg.; August 5, 1985, Reg.; July 2, 2004, Susp.	7/2/2004	7/2/2004
Bayboro, Town of, Pamlico County	370183	May 17, 1973, Emerg.; December 4, 1985, Reg.; July 2, 2004, Susp.	.....do*	Do.
Bridgeton, Town of, Craven County	370436	October 19, 1973, Emerg.; May 4, 1987, Reg.; July 2, 2004, Susp.	.....do	Do.
Havelock, City of, Craven County	370265	June 20, 1975, Emerg.; May 4, 1987, Reg.; July 2, 2004, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Jones County, Unincorporated Areas ...	370379	April 28, 1975, Emerg.; August 16, 1988, Reg.; July 2, 2004, Susp.	.....do	Do.
Kinston, City of, Lenoir County	370145	November 7, 1974, Emerg.; June 15, 1982, Reg.; July 2, 2004, Susp.	.....do	Do.
LaGrange, Town of, Lenoir County	370579	August 12, 2002, Emerg.; July 2, 2004, Reg.; July 2, 2004, Susp.	.....do	Do.
Lenoir County, Unincorporated Areas ...	370144	July 7, 1980, Emerg.; January 6, 1983, Reg.; July 2, 2004, Susp.	.....do	Do.
Maysville, Town of, Jones County	370330	August 11, 1975, Emerg.; August 19, 1986, Reg.; July 2, 2004, Susp.	.....do	Do.
Minnesott Beach, Town of, Pamlico County.	370418	September 23, 1985, Emerg.; September 23, 1985, Reg.; July 2, 2004, Susp.	.....do	Do.
New Bern, City of, Craven County	370074	December 11, 1973, Emerg.; June 1, 1978, Reg.; July 2, 2004, Susp.	.....do	Do.
Oriental, Town of, Pamlico County	370279	May 17, 1973, Emerg.; December 4, 1985, Reg.; July 2, 2004, Susp.	.....do	Do.
Pamlico County, Unincorporated Areas	370181	May 17, 1973, Emerg.; September 4, 1985, Reg.; July 2, 2004, Susp.	.....do	Do.
Pollocksville, Town of, Jones County	370142	January 15, 1974, Emerg.; September 4, 1986, Reg.; July 2, 2004, Susp.	.....do	Do.
Stonewall, Town of, Pamlico County	370437	May 17, 1973, Emerg.; December 4, 1985, Reg.; July 2, 2004, Susp.	.....do	Do.
Trenton, Township of, Jones County	370141	May 27, 1975, Emerg.; September 1, 1987, Reg.; July 2, 2004, Susp.	.....do	Do.
Vanceboro, Town of, Craven County	370075	October 19, 1973, Emerg.; August 4, 1988, Reg.; July 2, 2004, Susp.	.....do	Do.
Vandemere, Town of, Pamlico County	370438	May 17, 1973, Emerg.; December 4, 1985, Reg.; July 2, 2004, Susp.	.....do	Do.

*-do- = Ditto
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: June 17, 2004.

Archibald C. Reid, III,

Acting Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–15055 Filed 7–1–04; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 64

[DA 04–671]

International Bureau Filing System (IBFS)

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** on May 26, 2004 (69 FR 29894), codifying rules governing the electronic filing of documents in the Commission's International Bureau Filing System (IBFS). This document inadvertently contained several errors. The introductory text of § 1.767(a) inadvertently removed §§ 1.767(a)(1) through (11). The rules in new subpart Y were inadvertently designated §§ 1.9000 through 1.9018 instead of §§ 1.10000 through 1.10018, respectively. Finally, the amendments to the section heading for § 64.1001 and paragraphs (a) and (b) did not reflect earlier revisions to § 64.1001. In addition, the effective date for § 64.1001 did not reflect that the rule changes were subject to approval by the Office of Management and Budget under the Paperwork Reduction Act.

DATES: Effective on July 2, 2004, except for the revisions to § 64.1001, which contains information requirements that have not yet been approved by the Office of Management and Budget (OMB). The Commission will publish a document announcing the effective date of this section.

FOR FURTHER INFORMATION CONTACT: Mary Jane Solomon, International Bureau, telephone (202) 418–0593 or via the Internet at *maryjane.solomon@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission published a document in the **Federal Register** (69 FR 29894, May 26, 2004) to adopt rules governing electronic filing of documents in its International Bureau Filing System (IBFS). The Commission's amendments to the introductory text of § 1.767(a) inadvertently removed §§ 1.767(a)(1) through (11). Also, the Commission adopted a new subpart Y to part 1 of the Commission's rules. The rules in subpart Y were inadvertently designated §§ 1.9000 through 1.9018. Those rules should have been designated as §§ 1.10000 through 1.10018, respectively. Finally, the Commission adopted amendments to § 64.1001, and stated that those amendments would take effect on May 19, 2004. Those amendments did not reflect earlier revisions to § 64.1001 and that those revisions were subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This document corrects these errors by revising §§ 64.1001(a) and (b), and by scheduling the effective date of the revisions to § 64.1001 upon approval by OMB.

List of Subjects in 47 CFR Parts 1 and 64

Administrative practice and procedure, Communications and common carriers, Reporting and recordkeeping requirements.

■ Accordingly, 47 CFR parts 1 and 64 are corrected by making the following correcting amendments:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

■ 2. Section 1.767 is amended by revising paragraph (a) to read as follows:

§ 1.767 Cable landing licenses.

(a) Applications for cable landing licenses under 47 U.S.C. 34–39 and Executive Order No. 10530, dated May 10, 1954, should be filed in accordance with the provisions of that Executive Order. You may file your application electronically on the Internet through the International Bureau Filing System (IBFS) or by paper. For information on filing your application through IBFS, see Part 1, Subpart Y and the IBFS homepage at *http://www.fcc.gov/ibfs*. Paper applications should be filed in duplicate. Regardless of whether they are filed on paper or electronically, these applications must contain:

(1) The name, address and telephone number(s) of the applicant;

(2) The Government, State, or Territory under the laws of which each corporate or partnership applicant is organized;

(3) The name, title, post office address, and telephone number of the officer and any other contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed:

(4) A description of the submarine cable, including the type and number of channels and the capacity thereof;

(5) A specific description of the cable landing stations on the shore of the United States and in foreign countries where the cable will land. The description shall include a map showing specific geographic coordinates, and may also include street addresses, of each landing station. The map must also specify the coordinates of any beach joint where those coordinates differ from the coordinates of the cable station. The applicant initially may file a general geographic description of the landing points; however, grant of the application will be conditioned on the Commission's final approval of a more specific description of the landing points, including all information required by this paragraph, to be filed by the applicant no later than ninety (90) days prior to construction. The Commission will give public notice of the filing of this description, and grant of the license will be considered final if the Commission does not notify the applicant otherwise in writing no later than sixty (60) days after receipt of the specific description of the landing points, unless the Commission designates a different time period;

(6) A statement as to whether the cable will be operated on a common carrier or non-common carrier basis;

(7) A list of the proposed owners of the cable system, including each U.S. cable landing station, their respective voting and ownership interests in each U.S. cable landing station, their respective voting interests in the wet link portion of the cable system, and their respective ownership interests by segment in the cable;

(8) For each applicant of the cable system, a certification as to whether the applicant is, or is affiliated with, a foreign carrier, including an entity that owns or controls a foreign cable landing station in any of the cable's destination markets. Include the citizenship of each applicant and information and certifications required in §§ 63.18(h) through (k), and in § 63.18(o), of this chapter;

(9) A certification that the applicant accepts and will abide by the routine conditions specified in paragraph (g) of this section; and

(10) Any other information that may be necessary to enable the Commission to act on the application.

(11)(i) If applying for authority to assign or transfer control of an interest in a cable system, the applicant shall complete paragraphs (a)(1) through (a)(3) of this section for both the transferor/assignor and the transferee/assignee. Only the transferee/assignee needs to complete paragraphs (a)(8) through (a)(9) of this section. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The application shall also specify, on a segment specific basis, the percentage of voting and ownership interests being transferred or assigned in the cable system, including in a U.S. cable landing station. The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination.

(ii) In the event the transaction requiring an assignment or transfer of control application also requires the filing of a foreign carrier affiliation notification pursuant to § 1.768, the applicant shall reference in the application the foreign carrier affiliation notification and the date of its filing. *See* § 1.768. *See* also paragraph (g)(7) of this section (providing for post-transaction notification of pro forma assignments and transfers of control).

(iii) An assignee or transferee shall notify the Commission no later than thirty (30) days after either consummation of the assignment or transfer or a decision not to consummate the assignment or transfer. The notification may be by letter and shall identify the file numbers under which the initial license and the authorization of the assignment or transfer were granted.

* * * * *

§§ 1.900 through 1.8018 [Redesignated as §§ 1.10000 through 1.10018]

■ 3. In subpart Y, §§ 1.9000 through 1.9018 are redesignated as §§ 1.10000 through 1.10018.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 4. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

■ 5. Section 64.1001 is amended by revising the section heading, paragraph (a), and paragraph (b) to read as follows:

§ 64.1001 Requests to modify international settlements arrangements.

(a) The procedures set forth in this rule apply to carriers that are required to file with the International Bureau, pursuant to § 43.51(e) of this chapter, requests to modify international settlement arrangements. Any operating agreement or amendment for which a modification request is required to be filed cannot become effective until the modification request has been granted under paragraph (e) of this section. If you must file a modification request, you may either file electronically or on paper. The electronic form requires you to submit the same information that is required in the paper filing, specified below. A modification request may be filed electronically on the Internet through the International Bureau Filing System (IBFS) or by paper. For information on filing your notification through IBFS, see part 1, subpart Y of this chapter, and the IBFS homepage at *http://www.fcc.gov/ibfs*.

(b) A modification request must contain the following information:

(1) The applicable international service;

(2) The name of the foreign telecommunications administration;

(3) The present accounting rate (including any surcharges);

(4) The new accounting rate (including any surcharges);

(5) The effective date;

(6) The division of the accounting rate; and

(7) An explanation of any proposed modification(s) in the operating agreement with the foreign correspondent.

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–15004 Filed 7–1–04; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 69, No. 127
Friday, July 2, 2004

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 02–111–1]

Tuberculosis; Amend the Definition of Affected Herd

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the tuberculosis regulations by removing the two different definitions of *affected herd* and replacing them with a single, updated definition. This action is necessary because the definitions that appear in the regulations are out-of-date and inconsistent. This action would provide more clarity to the regulations.

DATES: We will consider all comments that we receive on or before August 31, 2004.

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

- *EDOCKET:* Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 02–111–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–111–1.
- *E-mail:* Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–111–1" on the subject line.
- *Agency Web Site:* Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

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

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

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

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious and infectious granulomatous disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other warm-blooded species, including humans. Tuberculosis in infected animals and humans manifests itself in lesions of the lung, lymph nodes, bone, and other body parts, causes weight loss and general debilitation, and can be fatal. At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for tuberculosis in livestock. Through this program, the Animal and Plant Health Inspection Service (APHIS) works cooperatively with the national livestock industry and State animal health agencies to eradicate tuberculosis from domestic livestock in the United States and prevent its recurrence.

Federal regulations implementing this program are contained in 9 CFR part 77, "Tuberculosis" and in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (UMR), January 22, 1999, edition, which is incorporated by reference into the regulations in part 77. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of bovine tuberculosis. Subpart A of part 77 (§§ 77.1–77.4) contains general provisions of the tuberculosis regulations such as definitions; subpart B (§§ 77.5–77.19) contains specific provisions regarding cattle and bison; and subpart C (§§ 77.20–77.41) contains specific provisions regarding captive cervids.

Currently, there are two definitions of *affected herd* in part 77. In § 77.5, *affected herd* is defined as "a herd in which tuberculosis has been disclosed in any cattle or bison by an official tuberculin test or by post mortem examination." In § 77.20, *affected herd* is defined as "a herd of captive cervids that contains or that has contained one or more captive cervids infected with *Mycobacterium bovis* (determined by bacterial isolation of *M. bovis*) and that has not tested negative to the three whole herd tests as prescribed in § 77.39(d) of this part."

We are proposing to remove these two definitions, which are out-of-date and inconsistent, and replace them with a new definition that would apply to cattle, bison, and captive cervids and be consistent with that in the UMR.

We would define *affected herd* as "a herd of livestock in which there is strong and substantial evidence that *Mycobacterium bovis* exists. This evidence should include, but is not limited to, any of the following: Epidemiologic evidence, histopathology, polymerase chain reaction (PCR) assay, bacterial isolation or detection, testing data, or association with known sources of infection." This single definition, which matches the definition in the UMR, would provide more clarity to the regulations. In addition, the proposed definition would

make the regulations more consistent with the UMR.

Executive Order 12866 and Regulatory Flexibility Act

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

We are proposing to amend the tuberculosis regulations by removing the two different definitions of *affected herd* and replacing them with a single, updated definition. This action is necessary because the definitions that appear in the regulations are out-of-date and inconsistent. This action would provide more clarity to the regulations.

No economic benefits of costs are associated with this action, which would simply update and clarify our definition of *affected herd*. This action would have no effects on small entities, other Federal agencies, State governments, or local governments.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 would continue to read as follows:

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

2. Section 77.2 would be amended by adding, in alphabetical order, a definition of *affected herd* to read as follows:

§ 77.2 Definitions.

* * * * *

Affected herd. A herd of livestock in which there is strong and substantial evidence that *Mycobacterium bovis* exists. This evidence should include, but is not limited to, any of the following: Epidemiologic evidence, histopathology, polymerase chain reaction (PCR) assay, bacterial isolation or detection, testing data, or association with known sources of infection.

* * * * *

§§ 77.5 and 77.20 [Amended]

3. Sections 77.5 and 77.20 would be amended by removing the definitions of *affected herd*.

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

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–15072 Filed 7–1–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18061; Airspace Docket No. 04–AAL–9]

Proposed Establishment of Class E Airspace; Beaver, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Beaver, AK. Two new Standard Instrument Approach Procedures (SIAPs) are being published for the Beaver Airport. There is no existing Class E airspace to contain aircraft executing the new instrument approaches at Beaver, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) above the surface at Beaver, AK.

DATES: Comments must be received on or before August 16, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–18061/ Airspace Docket No. 04–AAL–9, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–18061/Airspace Docket No. 04–AAL–9." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may

be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by establishing new Class E airspace at Beaver, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Beaver, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Beaver Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 5, original; and (2) RNAV (GPS) Runway 23, original. New Class E controlled airspace extending upward from 700 ft. above the surface within the Beaver Airport area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Beaver airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9L, *Airspace Designations and Reporting Points*, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only invoked an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significantly regulatory action" under Executive Order 1266; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Beaver, AK [New]

Beaver Airport, AK

(Lat. 66°21′44″N., long. 147°24′24″W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Beaver Airport.

* * * * *

Issued in Anchorage, AK, on June 24, 2004.

Judith G. Heckl,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 04–15035 Filed 7–1–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

User Input to the Aviation Weather Technology Transfer (AWTT) Board

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: The FAA will hold an informal public meeting to seek input from a specific, focused group of aviation weather users. Details: July 14, 2004; Aircraft Owners & Pilots Association (AOPA), 421 Aviation Way, Frederick, MD 21701–4756; 9 a.m. to 4 p.m. The objective of this meeting is to provide an opportunity for a specific group of aviation weather users, general aviation pilots, to provide input on FAA's plans for implementing new weather products.

DATES: The meeting will be held at AOPA, 421 Aviation Way, Frederick, MD 21701–4756: 9 a.m. to 4 p.m. on July 14, 2004.

FOR FURTHER INFORMATION CONTACT: Debi Bacon, Aerospace Weather Policy Division, ARS–100, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number (202) 385–7705; Fax: (202) 385–7701; e-mail: *debi.bacon@faa.gov*.

SUPPLEMENTARY INFORMATION:

History

In 1999, the Federal Aviation Administration (FAA) established an Aviation Weather Technology Transfer (AWTT) Board to manage the orderly transfer of weather capabilities and products from research and development (R&D) into operational use. The board is composed of mid-level managers from FAA and National Weather Service (NWS) and meet semi-annually or as needed. The Board is responsible to determine the readiness of weather R&D products for

experimental use, full operational use for meteorologists or full operational use for end users. The board's determinations are based upon criteria such as users needs, costs and benefits, risks, product readiness and budget.

FAA has the sole responsibility and authority to make decisions intended to provide a safe, secure, and efficient U.S. national airspace system. However, it behooves FAA to not make decisions in a vacuum. Therefore, FAA seeks input from the user community at quarterly meetings before decisions are finalized. Two such meetings were held in January and April 2004.

At the quarterly meetings, industry users are invited to provide for development of concepts of use (ConUse) for individual aviation weather products approaching specific AWTT board decision points. In 2004, meetings are also being used to acquire input for an aviation weather roadmap. Meetings are announced in the **Federal Register** and open to all interested parties.

While this meeting is the normal quarterly meeting, input will not be sought for any specific weather product. Rather, it is intended to acquire input for the aviation weather roadmap from one specific user group: General aviation pilots. All interested users in other user groups may attend and observe, however only certain, focused information will be sought from the specific group.

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by representatives of FAA Headquarters.

(b) The meeting will be open to all persons on a space-available basis. Every effort was made to provide a meeting site with sufficient seating capacity for the expected participation. There will be neither admission fee nor other charge to attend and participate.

(c) Attendees should present themselves to the receptionist at the front entrance of the AOPA, 421 Aviation Way, Frederick, MD 21701–4756. Attendees will be further directed to the meeting room location.

(d) FAA personnel will lead a session intended to refine an aviation weather roadmap. Comments from the specific user group will be sued to complete and/or verify a decision-making matrix regarding specific types of weather phenomena. Comments/Feedback on the proposed documents will be captured through discussion between FAA personnel and those focused users attending the meeting.

(e) FAA will not take any action items from this meeting nor make any commitments to accept specific users suggestions. The meeting will not be formally recorded. However, informal tape recordings may be made of the presentations to ensure that each respondent's comments are noted accurately.

(f) An official verbatim transcript or minutes of the informal meeting will not be made. However, a list of the attendees and a completed matrix will be produced. Any person attending may receive a copy of the written information upon request to the information contact, above.

(g) Every reasonable effort will be made to hear each person's feedback consistent with a reasonable closing time for the meeting. Written feedback is also solicited and may be submitted to FAA personnel for the period July 15–August 31, 2004.

Agenda

(a) Opening Remarks and Discussion of Meeting Procedures.

(b) Review of AWTT user input process.

(c) Focused Input Session.

(d) Closing Comments.

* * * * *

Issued in Washington, DC, on June 28, 2004.

Richard J. Heuwinkel,

Acting Staff Director, Office of Aerospace Weather Policy and Standards.

[FR Doc. 04–15116 Filed 7–1–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 5, 16, 156, 157, 385

[Docket No. RM04–9–000]

Electronic Notification of Commission Issuances

June 23, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations governing notice of Commission issuances. This change would affect both service list and mailing list recipients. The revisions are needed to allow the Commission, in most instances, to send notice of issuances via e-mail. The proposed revisions are intended to increase the speed with which recipients receive issuances and reduce Commission costs, and will also provide more accurate and up-to-date service lists for parties to Commission proceedings to employ. The Commission also is proposing a revision to its regulations governing service by participants to Commission proceedings upon other participants to encourage greater use of service by electronic means. Finally, the Commission is proposing to clarify its regulations to ensure that documents with certification or verification requirements may be filed electronically.

DATES: Comments are due August 2, 2004.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT: Wilbur Miller, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 502–8953.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

1. As part of its effort to reduce the use of paper in compliance with the Government Paperwork Elimination Act,[1] the Federal Energy Regulatory Commission (Commission) is proposing revisions to its regulations that will provide, in most instances, for notice of Commission issuances to be provided by e-mail rather than postal mail. These revisions cover both service lists, which are comprised of parties to Commission proceedings, and mailing lists, which are informal groups of persons and entities that have interests that could be affected by events in certain types of Commission proceedings. The Commission also is proposing to make service by electronic means the preferred method of service by participants in Commission proceedings upon other participants, and to clarify its regulations to ensure that documents with signature certification or verification requirements may be filed electronically.

2. The Commission since 2000 has issued a series of rulemakings to convert the amount of paper involved in its proceedings, as far as possible, to

[1] 44 U.S.C. 3504.

electronic formats. These rulemakings have been intended both to reduce the cost, to the public and the Commission, of extensive use of paper documents, and to make information regarding Commission proceedings and other activities more accessible and usable by maintaining that information in electronic form. The Commission to date has instituted electronic filing via the Internet for most documents submitted in proceedings under 18 CFR part 385,[2] as well as many of its forms.[3] Service of documents by participants in a proceeding upon other participants also may be made by electronic means, rather than through postal mail or other physical delivery, upon agreement of the participants.[4] In addition, in August 2002, the Commission initiated a system of electronic registration to act as a gateway to its online services. The eRegistration system allows users to input identifying information as a precursor to using services such as electronic filing, electronic subscription, or electronic service. The eRegistration system has been available on the Commission's Web site, *http://www.ferc.gov,* and is required for persons wishing to file documents electronically.

Service Lists

3. The Commission is proposing to initiate an eService program during 2005 that will require each person on a service list to provide an eRegistered e-mail address so that the Commission's Secretary, pursuant to Rule 2010(b),[5] will be able to serve issuances upon parties by electronic means, and so that parties may electronically serve one another. Such service would employ contact e-mail addresses as they are listed on official service lists maintained by the Commission and accessible on the Commission's Web site at the FERC Online page. The Commission is proposing to make electronic service—generally e-mail—the default form of service by parties upon one another, as explained below.

4. To implement eService, the Commission proposes revising Rule 2010 to require persons eligible to receive service under that rule to eRegister pursuant to 18 CFR 390.1 (2003). The requirement of eRegistration would apply only to participants who become eligible for inclusion on a service list after the effective date of the final rule. Participants already on existing service lists would not be required to take any additional steps. The Commission anticipates, however, that it will inform these contacts that they may eRegister and, as they do so, will eventually provide a means of replacing their contact information on existing service lists with their newer eRegistration contact information. A person may eRegister through the FERC Online page at *http://www.ferc.gov/docs-filing/ferconline.asp.* If a person who has not eRegistered attempts to file a document with the Commission electronically, the system will prompt the user first to eRegister.

5. When a person submits an initial filing on behalf of one or more participants, that person will by default become the representative contact listed on the official service list for the party or parties on whose behalf he is filing. The contact person may, as part of the same filing or via a subsequent filing, identify, with names and e-mail addresses, additional contacts for one or more of the parties the person represents. These additional contacts, if they have eRegistered with the e-mail address that the filer provided for them, will also appear on the service list associated with their party or parties. If a person listed as a contact on a filing is not yet eRegistered, then the eService system will generate an e-mail to that contact informing him that in order to get on the official service list for the relevant proceeding, he will need to first eRegister. This e-mail invitation to eRegister to get on the service list will include a link to FERC Online. Once the person eRegisters, the system will automatically place that person as a contact on the service list for that proceeding. The eRegistration system will also require a postal address, which may be necessary in instances where e-mail is not a practical medium.

6. The official service list will initially include the names of all persons designated to receive service in the initial pleading, excluding protests, or in a tariff or rate filing, as well as the representatives of Commission trial staff.[6] When an intervention is filed, the contacts for the intervenor will be added to the service list.[7] If the intervention is filed electronically, the intervenor will be added to the service list automatically. If it is filed in paper form, Commission staff will add the intervenor manually. If the intervention is eventually denied, the intervenor will be removed from the service list at that time.

7. Service lists will continue to be available via the "Service List" menu option on the FERC Online home page. The URL address to which the service list menu option links, as well as links to individual service lists, however, are subject to change. Therefore, persons accessing these service lists may need to change their bookmarks at times. Service lists found via the service list page will continue to be the official lists for all proceedings; therefore, persons required to serve documents in Commission proceedings will still be required to use the list available through the FERC Online page. In addition to including contacts' e-mail addresses, the new Web-based service list page on FERC Online will provide enhanced capabilities to search for service lists. As currently planned, eService will allow users to search for service lists by docket number, contact information, and/or organization name. Service lists will be available for viewing, downloading, and printing.[8] All contacts' e-mail addresses will be visible on service lists, but will be accessible only to eRegistrants who log on to FERC Online. Restricted service lists, as well as the regular service lists, will eventually be accessible via the FERC Online service list page, although this function may not be available immediately.

8. As noted above, with the eService initiative the Commission intends that the Secretary will serve Commission issuances electronically using contacts' eRegistered e-mail addresses maintained on the official service lists. Contacts will receive links to Commission issuances and notices contained in eLibrary, in the same manner in which the eSubscription system currently functions. The Commission intends to implement the eService system and begin electronic service of issuances by the Secretary in February, 2005, and will make a public announcement at the time it begins serving issuances electronically. The Commission anticipates that this change in procedures will provide faster and more reliable notice of Commission issuances, while producing some savings in mailing costs.

9. The Commission believes that the eRegistration system will provide reliability that is equivalent to postal mail-based service. Once a contact is registered, the system uses the contact's

[2] Order No. 619, Electronic Filing of Documents, FERC Statutes and Regulations, Regulations Preambles July 1996–December 2000 ¶ 31,107 (2000).

[3] *See http://www.ferc.gov/docs-filing/eforms-elec.asp.*

[4] 18 CFR 385.2010(f)(3) (2003).

[5] 18 CFR 385.2010(b) (2003).

[6] *See* 18 CFR 385.2010(c)(1) (2003).

[7] *See* 18 CFR 385.2010(f) (2003).

[8] Current download formats for service lists will be retained, including delimited with comma, delimited with space, delimited with tab, delimited with tilde, Excel, and database file (dbf).

registered e-mail address for service and notification pertaining to Commission proceedings. It will be incumbent on participants in Commission proceedings to ensure that their contact information is kept up-to-date, just as it has always been incumbent on participants to ensure that the Commission and other relevant persons have their current postal mailing addresses.

10. To effectuate eService, the Commission is proposing to revise Rule 2010 to provide that, to be included on a service list, a person must be eRegistered. This requirement would apply only to persons who become eligible for inclusion on service lists after the effective date of the final rule. Rule 2010 also would be revised to provide that service by the Secretary will be by electronic means, unless such means are impractical, in which case service will be by postal mail.

11. As part of the proposed revisions, the Commission would provide that persons who are unable to register or to receive service electronically may apply for a waiver and register by a paper form. The procedures for paper registration are already provided in 18 CFR 390.3. In such cases, the Commission would manually enter the person's registration information in eService, and that person would continue to receive postal mail service, both from other participants and from the Commission. In addition, the Secretary has authority under § 390.4 to find filers to be exempt from eRegistration requirements where eRegistration offers no value to the participant.

Service by Participants

12. As noted above, service by participants in Commission proceedings upon other participants currently is by postal mail or other physical delivery, unless the participants agree otherwise. The Commission in this notice is proposing to revise its service rules[9] to change the "default" form of participant service to service by electronic means. The Commission believes this change will encourage the use of e-mail rather than paper, without producing any hardship. The proposed provision requires that participants serve one another by electronic means unless they agree to do otherwise or unless one or more participants cannot receive electronic service. In the latter case service will be by postal mail or other physical delivery. This revision would be effective only for proceedings initiated after the effective date of the final rule, because existing mailing lists will not have the e-mail addresses of persons listed on those lists before that date.

13. One alternative approach would be to enable participants to serve documents by providing the link to the document in eLibrary. This would eliminate the necessity of attaching documents to e-mails. Such a change would require a revision to the Commission's rules to allow service on other participants to be made after the link became available. The Commission invites comments on this possible approach.

Mailing Lists

14. As a part of its responsibility to keep the public informed of regulatory activities that may be of interest to them, the Commission creates mailing lists in connection with various proceedings related to hydroelectric projects and natural gas facilities. These mailing lists include State and Federal agencies, members of Congress and other elected officials, Indian tribes, landowners, and other individuals and organizations that might have an interest in the relevant proceeding. Persons on a mailing list are given the opportunity, at their option, to continue to receive copies of certain documents issued by the Commission in the proceeding.

15. In the natural gas area, the process of sending out notices to mailing lists may be triggered by the environmental review process, or by certain other events. Once the process begins, the Commission establishes a mailing list from existing lists and other information maintained by Commission Staff, and information provided by the applicant. The Commission issues a notice, the content of which depends on the nature of the proceeding, and mails it to the persons and organizations on the mailing list. The notice explains that, if the recipient wishes to continue to receive Commission-issued environmental documents related to the proceeding, he must return a request in a mailer, which is provided. Recipients who do not return the mailer may be dropped from the mailing list.[10] Mailing lists in natural gas proceedings may number in the thousands of recipients, the large majority of whom are landowners.

16. Mailing lists in hydropower proceedings operate somewhat differently. The Commission typically sends out many notices of different events or stages of the process. Although some occur during the term of the license, most are related to license/relicense application processing and can occur both before and after the application is filed. Most of the recipients are official or institutional in nature, mainly Federal, State and local agencies, elected officials and Indian tribes, although non-governmental organizations and local citizens often participate. The number of recipients typically is much lower than in gas pipeline proceedings. Recipients generally are not expected to respond in order to continue receiving documents.

17. The Commission is proposing in both the gas and hydropower areas to provide notice, where possible, in electronic form through e-mail. It therefore requests comment on a system in which it would send notice, through postal mail as is currently done, at the beginning of a proceeding. The notice would provide a URL that would take the recipient to a Web page specific to the relevant mailing list, which would not be directly linkable from the Commission's Web site.[11] This page in turn would direct the recipient to the Commission's eRegistration system. There, the recipient would go through the brief registration process and would sign up to receive e-mail notification of certain documents issued by the Commission in the relevant proceeding. The recipient also would be asked for a mailing address, in the event that it is necessary to send some documents by postal mail. The Commission does not intend to make these e-mails or mailing addresses public; they would be available for use by the Commissions to provide notification regarding FERC documents to mailing list recipients. E-mails subsequently would contain links to the relevant documents. The initial notice would explain that, if the recipient was unable to receive e-mail notifications, the attached form could be mailed to the Commission explaining this fact. In those instances, the documents would be sent by postal mail, as is currently the case. In cases where the mailing list must be expanded during a proceeding, such as where the location of a project changes, "new" mailing list members will be notified by postal mail in the same manner as the "original" ones.[12] The

[9] 18 CFR 385.2010(f) (Rule 2010(f)).

[10] Mailing lists are distinct from service lists, which are comprised of persons and entities who have become parties to a proceeding. *See* 18 CFR 385.2010. A member of a mailing list may or may not intervene and become a party, and thus may or may not be on the service list.

[11] The Commission needs to keep track specifically of mailing list recipients, which it could not do if the "signup" page was available to the general public.

[12] For those mailing list members that are institutional or official in nature, the Commission may be able to notify them initially via e-mail rather than postal mail.

new mailing list procedures would apply only to proceedings commenced after the procedures were adopted.

18. The purpose of the automated mailing list feature will be different from that of the Commission's eSubscription service. The latter is available to anybody who wishes to receive notification of all documents in a specific proceeding. Thus, an eSubscriber gets documents both received and issued by the Commission. The Commission's interest in eSubscription is to ensure that the service is operationally efficient and that it provides value to the subscriber. On the other hand, the Commission needs to keep track of the persons on the mailing list in a hydropower or natural gas facility proceeding, to maintain a record of whether persons who may be impacted by the proceeding are receiving notice of relevant developments.

19. As noted above, the Commission may need to send some documents to mailing list recipients by postal mail. For example, most environmental impact statements and environmental assessments include site-specific location maps and engineering drawings that can not appropriately be made available on the Internet. 18 CFR 388.113. The Commission's Internet site does, however, provide information on how to obtain copies of the material. Additionally, in such cases the Commission generally sends copies of the environmental documents to all mailing list members via postal mail. It may eventually be possible for the Commission to provide mailing list members with some form of electronic access to such documents.

20. Certain sections of the Commission's regulations contain requirements that the Commission provide notice of specified events to specified recipients. These recipients, along with others added by the Commission, make up the mailing list for the relevant notice provision. The Commission is proposing to revise these sections to provide that notice will be by electronic means if practical, and otherwise by postal mail. The affected provisions are as follows:

- § 5.4(b)(1)(iii)—Request for acceleration of license expiration date.
- § 5.8(e)(3)—Commencement of proceeding and scoping document, or approval to use traditional licensing process or alternative procedures.
- § 5.19(c)(2)—Tendering notice and schedule.
- § 16.6(d)(1)(iii)—Notification under section 15 of the Federal Power Act.
- § 16.9(d)(1)(iii), (d)(2)(ii)—License applications under sections 14 and 15 of the Federal Power Act.
- § 156.8—Applications for orders under section 7(a) of the Natural Gas Act.
- § 157.9—Applications for certificates of public convenience and necessity and for orders approving abandonment under section 7 of the Natural Gas Act.

21. The conversion of as much as possible of the Commission's mailing lists will serve two primary purposes. First, interested persons will receive notice more promptly than they would through postal mail. Second, the Commission will be able to reduce its costs significantly; mailing lists often number in the thousands. The Commission remains committed, however, to providing reasonable notice to persons who may be affected by its proceedings. Any technological advancements will have to be compatible with this goal.

22. Consequently, the Commission requests comment on the changes to its practices described above. In particular, the Commission would like to receive comments addressing the question whether the proposed revisions would provide adequate notification to affected persons and whether other methods might better achieve the Commission's stated purposes. The Commission also would welcome any comments identifying notice provisions not covered in this proposal that should be revised.

Electronic Signature and Verification

23. The Commission's regulations currently provide that, in documents filed via the internet pursuant to Rule 2003(c),[13] the typed characters representing a person's name suffice as that person's signature. The Commission is proposing to expand that provision to cover signatures in all documents submitted in electronic form pursuant to the Commission's regulations. In addition, the Commission proposes to revise Rule 2003(c) to clarify its regulations to state specifically that any requirement for certification, notarization, verification, or any similar means by which a witness represents that his testimony is true, may be satisfied through the provisions of 28 U.S.C. 1746. That statute provides that a requirement in any rule or regulation for a sworn declaration, verification, certification, statement, oath or affidavit may be satisfied by a declaration under penalty of perjury that the matter attested to is true and correct. Although the statute applies of its own force to documents submitted under the Commission's regulations, the Commission wishes to ensure that persons submitting documents to it will not see a need to provide notarization or other means of verification that may be incompatible with electronic means of submission.

24. In connection with the above changes, the Commission also is proposing to require that a person or entity submitting a document that requires any form of verification to maintain a document with a physical signature on file until such time as the relevant proceeding is concluded. This measure should ensure that the purposes of requiring a statement under oath, such as ensuring that the person stating or swearing to the information understands the significance of his or her undertaking, continue to be met. Generally, the physically signed document should be retained at least until the time for all potential requests for rehearing and petitions for judicial review has expired, and all requested rehearing or review has been concluded. The person or entity retaining the signed copy should err on the side of caution, as premature disposal of such a document could result in negative inference with respect to its veracity.

Information Collection Statement

25. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[14] This proposed rulemaking would not contain any information collection requirements and compliance with the OMB regulations is thus not required.

Environmental Analysis

26. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[15] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[16] This proposed rule, if finalized, is procedural in nature and therefore falls under this exception; consequently, no

[13] 18 CFR 385.2003(c) (2003).

[14] 5 CFR 1320.12.

[15] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶30,783 (1987).

[16] 18 CFR 380.4(a)(2)(ii).

environmental consideration would be necessary.

Regulatory Flexibility Act Certification

27. The Regulatory Flexibility Act of 1980 [17] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. The Commission certifies that this proposed rule, if finalized, would not have such an impact on small entities.

Comment Procedures

28. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due August 2, 2004. Comments must refer to Docket No. RM04–9–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

29. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

30. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

Document Availability

31. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's home page *(http://www.ferc.gov)* and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

[17] 5 U.S.C. 601–612.

32. From FERC's home page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

33. User assistance is available for eLibrary and the FERC's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

List of Subjects

18 CFR Part 5

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 16

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 156

Administrative practice and procedure, Natural Gas, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric utilities, Penalties, Pipelines, Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 5, 16, 156, 157, and 385, Chapter I, title 18, *Code of Federal Regulations*, as follows:

PART 5—INTEGRATED LICENSE APPLICATION PROCESS

1. The authority citation for part 5 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

2. Amend § 5.4 by revising paragraph (b)(1)(iii) to read as follows:

§ 5.4 Acceleration of a license expiration date.

* * * * *

(b) * * *

(1) * * *

(iii) Notifying appropriate Federal, State, and interstate resource agencies and Indian tribes, and non-governmental organizations likely to be interested, by electronic means if practical, otherwise by mail.

* * * * *

3. Amend § 5.8 by revising paragraph (e)(3) to read as follows:

§ 5.8 Notice of commencement of proceeding and scoping document, or of approval to use traditional licensing process or alternative procedures.

* * * * *

(e) * * *

(3) Notifying appropriate Federal, State, and interstate resource agencies, State water quality and coastal zone management plan consistency certification agencies, Indian tribes, and non-governmental organizations, by electronic means if practical, otherwise by mail.

4. Amend § 5.19 by revising paragraph (c)(2) to read as follows:

§ 5.19 Tendering Notice and Schedule.

* * * * *

(c) * * *

(2) Notifying appropriate Federal, State, and interstate resource agencies, State water quality and coastal zone management plan consistency certification agencies, Indian tribes, and non-governmental organizations, by electronic means if practical, otherwise by mail.

* * * * *

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

5. The authority citation for part 16 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

6. Amend § 16.6 by revising paragraph (d)(1)(iii) to read as follows:

§ 16.6 Notification procedures under section 15 of the Federal Power Act.

* * * * *

(d) * * *

(1) * * *

(iii) Notifying the appropriate Federal and State resource agencies, State water quality and coastal zone management consistency certifying agencies, and Indian tribes, by electronic means if practical, otherwise by mail.

* * * * *

7. Amend § 16.9 by revising paragraphs (d)(1)(iii) and (d)(2)(ii) to read as follows:

§ 16.9 Applications for new licenses and nonpower licenses for projects subject to sections 14 and 15 of the Federal Power Act.

* * * * *

(d) * * *

(1) * * *

(iii) Notifying appropriate Federal, State, and interstate resource agencies, Indian tribes, and non-governmental organizations, by electronic means if practical, otherwise by mail.

(2) * * *

(ii) Provide the notice to appropriate Federal, State, and interstate resource agencies and Indian tribes, by electronic means if practical, otherwise by mail; and

* * * * *

PART 156—APPLICATIONS FOR ORDERS UNDER SECTION 7(a) OF THE NATURAL GAS ACT

8. The authority citation for part 156 continues to read as follows:

Authority: 52 Stat. 824, 829, 830; 56 Stat. 83, 84; 15 U.S.C. 717f, 717f(a), 717n, 717o.

9. Revise § 156.8 to read as follows:

§ 156.8 Notice of application.

Notice of each application filed, except when rejected in accordance with § 156.6, will be published in the **Federal Register** and copies of such notice sent to the state affected thereby via electronic means if practical, otherwise by mail.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

10. The authority citation for part 156 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

11. Revise § 157.9 to read as follows:

§ 157.9 Notice of application.

Notice of each application filed, except when rejected in accordance with § 157.8, will be issued within 10 days of filing, and subsequently will be published in the **Federal Register** and copies of such notice sent to States affected thereby, by electronic means if practical, otherwise by mail. Persons desiring to receive a copy of the notice of every application shall so advise the Secretary.

PART 385—RULES OF PRACTICE AND PROCEDURE

12. The authority citation for Part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

13. Amend § 385.2005 by adding paragraph (b)(3) and revising paragraph (c) to read as follows:

§ 385.2005 Subscription and verification (Rule 2005).

* * * * *

(b) * * *

(3) Any requirement that a filing include or be supported by a sworn declaration, verification, certificate, statement, oath, or affidavit may be satisfied by compliance with the provisions of 28 U.S.C. 1746, provided that the filer, or an authorized representative of the filer, maintains a copy of the document bearing an original, physical signature until after such time as all administrative and judicial proceedings in the relevant matter are closed and all deadlines for further administrative or judicial review have passed.

(c) *Electronic signature.* In the case of any document filed in electronic form under the provisions of this Chapter, the typed characters representing the name of a person shall be sufficient to show that such person has signed the document for purposes of this section.

14. Amend § 385.2010 by redesignating paragraphs (g) through (i) as (h) through (j), adding new paragraph (g), and revising paragraphs (b), (c), (e)(1) and (f) as follows:

§ 385.2010 Service (Rule 2010).

* * * * *

(b) *By the Secretary.* The Secretary will serve, as appropriate:

(1) A copy of any complaint on any person against whom the complaint is directed;

(2) A copy of any notice of tariff or rate examination or order to show cause, on any person to whom the notice or order is issued;

(3) A copy of any rule or any order by a decisional authority in a proceeding on any person included on the official service list, or applicable restricted service list, for the proceeding or phase of the proceeding, provided that such person has complied with paragraph (g) of this section.

(c) *Official service list.* (1) The official service list for any proceeding will contain:

(i) The name, address and, for proceedings commenced after February 1, 2005, e-mail address of any person designated for service in the initial pleading, other than a protest, or in the tariff or rate filing which is filed by any participant; and

(ii) The name of counsel for the staff of the Commission.

(2) Any designation of a person for service may be changed by following the instructions for the Commission's electronic registration system, located on its Web site at *http://www.ferc.gov* or, in the event that the proceeding was commenced prior to February 1, 2005, or the person designated for service is unable to use the electronic registration system, by filing a written notice with the Commission and serving the notice on each person whose name is included on the official service list.

* * * * *

(e) *Intervenors.* (1) If a motion to intervene or any notice of intervention is filed, the name, address and, for proceedings commenced after February 1, 2005, e-mail address of any person designated for service in the motion or notice are placed on the official service list or any applicable restricted service list, provided that such person has complied with paragraph (g) of this section. Any person placed on the official service list under this paragraph is entitled to service in accordance with this section. If a motion to intervene is denied, the name, address and e-mail address of each person designated for service pursuant to that motion will be removed from the official service list.

* * * * *

(f) *Methods of service.* Service of any document must be made:

(1) In the case of service by participants, by electronic means, unless such means are impractical or the parties agree otherwise, in which case service shall be made by:

(i) United States mail, first class or better; or

(ii) Delivery in a manner that, and to a place where, the person on whom service is required may reasonably be expected to obtain actual and timely receipt.

(2) In the case of service by the Secretary, by electronic means, unless such means are impractical, in which case service shall be made by United States mail.

(g) *Electronic registration.* In the case of proceedings commenced after February 1, 2005, any person, to be included on a service list, must have complied with the procedures for electronic registration made available on the Commission's web site, at *http://www.ferc.gov,* unless such person has secured a waiver under the provisions

of § 390.3 of this chapter, or is exempt under the provisions of § 390.4 of this chapter.

* * * * *

[FR Doc. 04–14893 Filed 7–1–04; 8:45 am]
BILLING CODE 6717–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404 and Part 416

[Regulations Nos. 4 and 16]

RIN 0960–AF85

Mandatory Exclusion of Health Care Providers and Representatives From Participating in Programs Administered by the Social Security Administration, Including Representative Payment

AGENCY: Social Security Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule creates a new administrative procedure requiring the Social Security Administration (SSA) to exclude representatives and health care providers who are convicted of fraud in the title II or title XVI disability programs administered by SSA or who are assessed civil monetary penalties from further participation in those programs for at least five years. The Foster Care Independence Act of 1999 amended the Social Security Act and requires SSA to create an administrative procedure for imposing penalties for false or misleading statements. This proposed rule will exclude those representatives and health care providers from participating in the programs and from serving as a representative payee.

DATES: To be sure your comments are considered, we must receive them by August 31, 2004.

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

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** on *http://www.gpoaccess.gov/fr/index.html*. It is also available on the Internet site for SSA (*i.e.*, Social Security Online): *http://policy.ssa.gov/pnpublic.nsf/LawsRegs*.

FOR FURTHER INFORMATION CONTACT: Charles M. Urban, Social Insurance Specialist, Professional Relations Branch, Office of Disability Programs, Office of Disability and Income Support Programs, Social Security Administration, 6401 Security Boulevard, Room 4634 Annex Building, Baltimore Maryland 21235–6401, *Charles.M.Urban@ssa.gov*, 410–965–9029, or TTY, 410–966–5609, or FAX 410–965–6659 for information about these regulations. For information on eligibility or filing for benefits: Call our national toll-free number, 1–(800) 772–1213 or TTY 1–(800) 325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background

There is no provision under the present law to exclude representatives and health care providers convicted of violations from further participation in Social Security programs. Social Security and Supplemental Security Income (SSI) law stipulate that anyone who knowingly or willfully makes, or causes to be made, any false statements or misrepresentations in applying for or continuing to receive Social Security or SSI payments shall be fined under title 18 of the U.S.C., imprisoned for not more than five years or both. Federal law also provides that any person who makes, or causes to be made, a statement or representation of material fact for use in any initial or continuing review of an individual's eligibility for Social Security disability benefits (title II) or Supplemental Security Income (SSI) (title XVI) benefits that the person knows or should know is false or misleading or omits a material fact or makes such a statement with knowing disregard for the truth is subject to a civil penalty of not more than $5,000 for each such statement or representation plus up to twice the value of the amount paid fraudulently.

Fraud prevention is a top priority of the Social Security Administration. Professionals and others who play a role in helping individuals apply for Social Security and SSI have a special responsibility to maintain high standards of truthfulness. The evidence, opinion, advice and recommendations they provide are often crucial to the eligibility determination process. Thus, any such representative or health care provider who gives false or misleading information or otherwise commits fraud as part of the eligibility determination must be subject to serious penalties. This is especially the case since experience shows that some of these individuals commit fraud in many cases, thereby resulting in substantial sums of money being paid fraudulently to numerous recipients. For instance, in December 1997, a cooperative team, consisting of members from the SSA, the Office of the Inspector General (OIG) and the State Disability Determination Service (DDS), conducted a joint vulnerability review of an extended family in a small Georgia town. There were 181 members of this family, which spanned 4 generations, receiving benefits under title XVI of the Social Security Act (the Act). The same medical provider was the treating source and conducted consultative examinations (CEs) for many of these family members. The findings of the review resulted in the creation of Cooperative Disability Investigation (CDI) units in several major cities. The IG reported on February 3, 1999, in his testimony to the Subcommittee on Human Resources that the CDIs have produced data that illustrate the need to sanction third-party facilitators who engage in fraudulent activities, as many of the allegations involved third-party facilitators such as physicians, lawyers, interpreters, and other service providers. The 1998 GAO report, "Supplementary Security Income: Action Needed on Long-Standing Problems Affecting Program Integrity," GAO/HHS–98–158, also found that the title XVI program was vulnerable to fraud and abuse.

We believe those representatives and health care providers who commit fraud or make false statements in any of the SSA administered programs should have administrative sanctions applied and be excluded from participating in any SSA program.

For these reasons, we propose to add a new section in both part 404 subpart P and part 416 subpart I to exclude representatives and health care providers who have committed fraud in any program administered by SSA from further participation in these programs for a period of at least five years.

Purposes of Administrative Sanctions

Administrative sanctions are civil remedies that agencies impose under their own authority to protect their programs from transactions with untrustworthy individuals or entities

and to recover program funds paid improperly or fraudulently. Because administrative sanctions are not considered to be "punitive," they can, and frequently are, imposed in addition to other remedies, such as criminal or civil judicial action.

The administrative sanction we propose to use in this rule is exclusion. We define exclusion as removing an individual or entity from participation in a program for a designated period of time, or permanently, after a due process proceeding.

Administrative Exclusion of Health Care Providers and Representatives

The principal objective of administrative sanctions activities will be to protect the integrity of the benefit programs SSA administers by excluding health care providers and representatives whose conduct indicates that they pose a threat to the integrity of SSA's programs. Excluded health care providers and representatives will be prohibited from serving as a representative payee. Excluded health care providers will be prohibited from supplying consultative examinations used to document the existence of impairments. All medical records produced by excluded parties resulting from treatment of individuals will be barred from use in the SSA disability evaluation process as of the date the exclusion takes effect. The public will be notified of the exclusion of health care providers and representatives. Medical records produced as result of treatment by the excluded providers will not be admitted as evidence to support a claim for benefits on account of disability.

Length of Exclusion

This proposed rule establishes a minimum 5-year period of mandatory exclusion for one infraction, a 10-year exclusion for two infractions, and permanent exclusion for three or more infractions. The time period of an exclusion will be based on Federal fraud convictions and/or the imposition of administrative penalties under section 1129a of the Act. This proposed rule also adopts the practice of using specific factors to determine whether a permanent exclusion should be imposed. Program exclusion will be in addition to any penalties based on SSA's or another agency's actions. Individuals or entities subject to a proposed mandatory exclusion will receive a 30-day advance notice of the impending exclusion and may challenge SSA's action by submitting information and arguments on their behalf (see sec. 205(b) of the Act). The proposed exclusion can be withdrawn only if the basis for it no longer exists, such as when a conviction is reversed on appeal, or the proposed subject is incorrectly identified.

Waiver of Exclusion

This proposed rule contains a limited waiver provision. The waiver would allow a party who meets the criteria for exclusion to continue to represent or provide health care to those who apply for benefits payable under title II and XVI of the Act only in cases where that party is the sole source of essential specialized services in the geographical area described in the proposed rule. This is being done so as not to disadvantage persons who live in sparsely populated rural areas. The Commissioner's waiver decision is not subject to review.

Regulatory Procedures

Clarity of These Proposed Rules

Executive Order 12866 requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand.

For example:

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

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed these proposed rules in accordance with Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

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

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the following table.

Section	Annual number of responses	Frequency of responses	Average burden per response (minutes)	Estimated annual burden (hours)
20 CFR 404.1503b 416.903b	3–5	1	30	2½

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be mailed or faxed to the Office of Management and Budget and to the Social Security Administration at the following addresses/fax numbers:

Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, Fax Number: 202–395–6974.

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

Comments can be received for between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security Disability Insurance; 96.002, Social Security Retirement Insurance; 96.004, Social Security

Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

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

Dated: April 7, 2004.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set forth in the preamble, we propose to amend subpart P of part 404 and subpart I of Part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

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

Subpart P—[Amended]

1. The authority citation for Subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225 and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Add a new § 404.1503b to read as follows:

§ 404.1503b Mandatory exclusion of health care providers and representatives from participating in SSA programs including serving as a representative payee.

(a) *Reasons for mandatory exclusions.* We will exclude from participation in social security programs any representative or health care provider who, on or after December 14, 1999:

(1) Has been convicted of a violation of section 208 or section 1632 of the Act;

(2) Has been convicted of any violation under title 18, U.S.C., relating to an initial application for or continuing entitlement to, or amount of, benefits under title II of the Act or an initial application for or continuing eligibility for, or amount of, benefits under title XVI of the Act; or

(3) Has been determined by the Commissioner to have committed an offense described in section 1129(a)(1) of the Act.

(b) *Effect of exclusion on the individual.* When we exclude an individual, we will prohibit that individual from:

(1) Acting as a medical source who provides items or services for claimants or beneficiaries for the purpose of assisting claimants or beneficiaries to demonstrate that they are disabled;

(2) Being appointed or recognized as a representative of claimants or beneficiaries, in dealings with us, under subpart R of this part and subpart O of part 416; and

(3) Being selected in the future, or from continuing to act as a representative payee, under subpart U of this part and subpart F of part 416.

(c) *Effect of exclusion on information or evidence from health care providers.* Beginning with the effective date of the exclusion, we will not consider the provider's medical source statements, opinions on issues reserved to the Commissioner, or other evidence prepared for the purpose of assisting a claimant or beneficiary in demonstrating disability. We will consider information or evidence derived from the services of an excluded medical source only when those services were rendered before the effective date of the exclusion.

(d) *Effect of exclusion on the records of the excluded representative.* An exclusion under this section will not be construed as having the effect of limiting access by a claimant, beneficiary, State disability determination agency, or us to records maintained by the excluded representative for services provided to a claimant or beneficiary before the effective date of an exclusion.

(e) *Length of exclusion.* We will exclude an individual for a period of five years, ten years or permanently.

(1) The minimum length of time for an exclusion will be:

(i) Five years if an individual has been subject to one excluding event as stated in paragraph (a) of this section;

(ii) Ten years if an individual has been subject to two separate excluding events as stated in paragraph (a) of this section (one of those events may have occurred before December 14, 1999); and

(iii) Permanent exclusion if an individual has been subject to three or more excluding events as stated in paragraph (a) of this section (one or two of those events may have occurred before December 14, 1999).

(2) Notwithstanding the time periods set forth in paragraph (e)(1) of this section, we shall impose a permanent exclusion upon the first or second excluding event if two or more of the following exist:

(i) The criminal sentence is for five or more years of incarceration and/or probation;

(ii) The criminal sentence includes payment of restitution to us in an amount equal to or more than $30,000;

(iii) The criminal conviction includes five or more separate violations of law;

(iv) The assessment of civil monetary penalties is equal to or more than $50,000;

(v) The assessment of civil monetary penalties was based on five or more violations of law;

(vi) The individual has been convicted of fraud, making false statements, or misrepresentations in any other government program or has been administratively determined to have committed such acts;

(vii) A State licensing authority has revoked or suspended any license issued to the individual in the past for fraud, false statements or misrepresentations; or

(viii) The individual failed to comply with § 404.1503b(v).

(f) *Exclusion determination.* The Inspector General is responsible for providing us with pertinent documentation regarding the excluding event within 45 days of the conviction or of the date upon which the determination under section 1129a of the Act becomes final. The information supplied by the Inspector General should, whenever practical, include the charging documents, plea agreements, agreements for deferred adjudication or pre-trial diversion, judgments of conviction, and in cases decided under section 1129a of the Act, a copy of the final decision that imposes civil monetary penalties. When we obtain evidence that an individual meets one or more of the criteria in paragraph (a) of this section, we will make a proposed determination to exclude that individual.

(1) We will use all of the information that we have collected.

(2) Based on this information, we will prepare a proposed determination that explains the reasons why we believe the individual should be excluded. Once we determine that the individual meets the criteria for exclusion, we will provide the individual with notice of the date on which the exclusion takes effect. We will also notify the individual of his or her right to appeal the determination to an administrative law judge and his or her right to request waiver of the exclusion.

(3) The exclusion determination will become effective 35 days after it is issued unless a request for hearing is

filed as described in paragraph (i) of this section or a request for waiver is made.

(4) If the individual requests a waiver of the proposed exclusion, that individual must submit to us a written statement and any relevant documentary evidence as required in paragraph (h) of this section. The statement and evidence to support the request for waiver must be submitted within 30 days of receiving the notice of proposed exclusion. We assume that the individual will receive the notice five days after the date that the notice of proposed exclusion is mailed.

(g) *Notice of proposed exclusion.* We will send the notice of proposed exclusion to the individual's last known address by certified mail. This notice will provide the following information:

(1) The basis for exclusion;

(2) The effect of the exclusion;

(3) The proposed effective date of the exclusion;

(4) The proposed period of exclusion; and

(5) The procedure and timeframe by which the individual may object to the exclusion and submit a written statement and relevant documents.

(h) *Waiver of exclusion.* We may waive the exclusion of an individual if we determine that he or she is the sole source of essential services in a community. We will consider only the location in which the infraction(s) took place in our determination. We will not consider situations where the party has moved to a remote location after the excluding event. Our decision concerning waiver of the exclusion shall not be subject to review.

(i) *Right to a hearing before an administrative law judge.* If an excluded individual is dissatisfied with our determination to exclude, the individual may request a hearing. The Associate Commissioner for Hearings and Appeals, or his or her delegate, will appoint an administrative law judge to conduct the hearing.

(1) The request for a hearing must be made within 30 days of the date that the excluded individual receives the determination to exclude.

(2) The individual must submit, with the request for a hearing, all exhibits that the individual wants to be received into the record, a list of any witnesses whom the individual intends to call at the hearing, and a statement of the issues being raised.

(3) A failure to submit a timely request for hearing, evidence, or witness list may be excused for good cause. If there is an untimely submission of a request for hearing and the administrative law judge does not find that there is good cause to excuse the untimely filing, the administrative law judge will dismiss the request for hearing. If there is an untimely submission of evidence or a witness list and the administrative law judge finds that there is no good cause to excuse the untimely filing, the administrative law judge will not enter such evidence into the record and will not permit the witnesses to testify at the hearing.

(j) *Disqualification of administrative law judge.* An administrative law judge shall not conduct a hearing if he or she is prejudiced or partial with respect to any party or has any interest in the matter pending for decision. The excluded individual has the right to object to the administrative law judge assigned to hear the individual's appeal. The individual must inform the administrative law judge, in writing and at his or her earliest opportunity, of the objection. The administrative law judge will consider the objection and decide whether to proceed with the hearing or withdraw. If he or she withdraws, the Associate Commissioner for Hearings and Appeals, or his or her delegate, will appoint another administrative law judge to conduct the hearing.

(k) *Issue before the administrative law judge.* The administrative law judge may only decide whether the basis for an individual's exclusion exists and whether the length of exclusion meets the requirements of paragraph (e) of this section. The administrative law judge has no authority to review the factual or legal conclusions of the conviction or determination that is the basis for the determination to exclude.

(l) *Pre-hearing procedures.* An administrative law judge may dismiss any hearing request that fails to state either an issue of disputed material fact or law regarding a matter that is subject to review; *i.e.*, whether the underlying conviction or civil monetary penalty exist. If the individual's hearing request and supporting documentation does not reveal the existence of a material factual or legal dispute, the administrative law judge will issue an order to show cause why the hearing request should not be dismissed. The individual must respond to the order to show cause 30 days from the date of receipt, which will be presumed to be five calendar days from the date of mailing. The administrative law judge will decide whether a material factual or legal dispute exists and will either dismiss the hearing request or set a date for the hearing.

(m) *Hearing procedures.* The procedures in §§ 404.936–404.938, 404.944, 404.948–404.949, 404.950(c-e), 404.953(a), and 404.957(a-b), 404.961 will apply to the hearing before the administrative law judge. If the administrative law judge dismisses a case, the administrative law judge may, within 60 days of the dismissal, vacate such dismissal if good cause exists.

(n) *Appeals Council review.* The Appeals Council may, on its own motion and within 60 days of the issuance of an administrative law judge's decision or dismissal, initiate review of the administrative law judge's decision or dismissal. We or the excluded individual may request the Appeals Council to exercise its authority to take own motion review. Sections 404.970(a), 404.973–404.975, 404.976(a) and (b)(2), will apply to the Appeals Council review of an administrative law judge's decision or dismissal. The Appeals Council will issue a decision or remand the case to the administrative law judge. The Appeals Council may affirm, modify, or reverse the administrative law judge's decision. A copy of the Appeals Council's decision will be sent to the excluded individual at his or her last known address.

(o) *Effect of Appeals Council review on exclusion.* Unless the Appeals Council reviews the decision or dismissal, the administrative law judge's decision or dismissal shall become the Commissioner's final decision 60 days after it is issued. If the Appeals Council decides to review the administrative law judge's decision within 60 days from the date it is issued, and the Appeals Council issues a decision, it will become the Commissioner's final decision.

(p) *Judicial review.* The excluded individual has the right to file a civil action in a Federal district court within 60 days of the date of the Commissioner's final decision. The excluded individual shall serve a copy of any civil action on the Commissioner at 6401 Security Boulevard, Baltimore, Maryland 21235–6401. Sections 404.983–404.984 will apply to any cases remanded by a Federal court.

(q) *Termination of exclusion.* (1) An individual excluded from participation under this section may request that we terminate an exclusion:

(i) At the end of the minimum period of exclusion;

(ii) If the individual becomes the sole source of essential services in a community; or

(iii) If the judgement or conviction that is the basis of the exclusion is set aside or expunged.

(2) We may terminate the exclusion if we determine, based on the conduct of the excluded individual that occurred after the date of the notice of exclusion, or which was unknown to us at the time of the exclusion, that:

(i) There is no basis for a continuation of the exclusion; and

(ii) There are reasonable assurances that the types of actions that formed the basis for the original exclusion have not recurred and will not recur.

(3) Our decision regarding termination of exclusion is not subject to review.

(r) *Penalties are not exclusive.* Exclusion imposed under this section is in addition to any other penalties or sanctions prescribed by law.

(s) *Notice to State agencies and the public.* (1) We will notify the State agencies employed for the purpose of making disability determinations of the exclusion of an individual from participating in Social Security programs when the Commissioner has issued a final decision to exclude. We will provide the following information:

(i) The facts and circumstances of the exclusion of the individual; and

(ii) The period that the exclusion will be in effect.

(2) We will also notify the state agencies of the fact and circumstances of each termination of exclusion made under paragraph (q) of this section. We will also provide the public with appropriate notice of individuals or entities who have been excluded from participation in our programs.

(t) *Notice to State licensing authorities.* We will notify appropriate State or local licensing agencies or other licensing authorities when the Commissioner has issued a final decision to exclude. We will provide those agencies or authorities with the facts and circumstances of the exclusion. We will also request that an appropriate investigation in accordance with State law be conducted, that appropriate sanctions be invoked, and that the State or local licensing agency or other licensing authority keep us currently and fully informed of their actions in response to our request.

(u) *Definitions.* As used in this section—

(1) *Individual* means any representative or health care provider.

(2) *Representative* will have the same meaning as stated in section 404.1703 of this part.

(3) *Health care provider* means any person or entity that employs a person or persons who would be considered a medical source.

(4) *Medical source* means any health care provider who is defined under section 404.1513(a) and (d)(1) of this part.

(5) *Act* means the Social Security Act.

(6) *Social security programs* means the program providing for monthly insurance benefits under title II of the Act and the program providing for monthly supplemental security income payments under title XVI of the Act (including State supplementary payments that we make.)

(7) *Sole source of essential services in a community* means that, in the case of health care providers, no other health care providers who perform similar services or, in the case of representatives, no other representatives who perform similar services exist within a 50 mile radius of the limits of the town, county or city in which the infraction took place.

(8) *Convicted* means:

(i) A judgment of conviction that has been entered against the individual by a Federal, State, or local court, except if the judgment of conviction has been set aside or expunged;

(ii) A finding of guilt against the individual by a Federal, State or local court;

(iii) A plea of guilty or nolo contendere by the individual has been accepted by a Federal, State or local court; or

(iv) The individual has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgement of conviction has been withheld.

(v) *Reporting requirements.* Any individual participating in or seeking to participate in any Social Security programs will inform us by letter, as soon as practicable, of any excluding event stated in paragraph (a) of this section. If the individual is a health care provider the letter must be sent to the following address: Social Security Administration, Office of Disability and Income Security Programs, Section 1136 Exclusion, Room 4634 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. If the individual is a representative, the letter must be sent to the following address: Social Security Administration, Office of Hearings and Appeals, Attention Special Counsel Staff, 5107 Leesburg Pike, Suite 1605, Falls Church, VA 22041. This letter must include a copy of the conviction, judgment, or administrative determination. The individual making such a report to us must comply with any further requests that we make for information regarding the reported matter.

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

Subpart I—[Amended]

3. The authority citation for Subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

4. Add a new § 416.903b to read as follows:

§ 416.903b Mandatory exclusion of health care providers and representatives from participating in SSA programs including serving as a representative payee.

(a) *Reasons for mandatory exclusions.* We will exclude from participation in social security programs any representative or health care provider who, on or after December 14, 1999:

(1) Has been convicted of a violation of section 208 or section 1632 of the Act;

(2) Has been convicted of any violation under title 18, U.S.C., relating to an initial application for or continuing entitlement to, or amount of, benefits under title II of the Act or an initial application for or continuing eligibility for, or amount of, benefits under title XVI of the Act; or

(3) Has been determined by the Commissioner to have committed an offense described in section 1129(a)(1) of the Act.

(b) *Effect of exclusion on the individual who has been excluded.* When we exclude an individual, we will prohibit that individual from:

(1) Acting as a medical source who provides items or services for claimants or beneficiaries for the purpose of assisting claimants or beneficiaries to demonstrate that they are disabled;

(2) Being appointed or recognized as a representative of claimants or beneficiaries, in dealings with us, under subpart R of part 404 of this chapter and subpart O of this part; and

(3) Being selected in the future, or from continuing to act as a representative payee, under subpart U of part 404 of this chapter and subpart F of this part.

(c) *Effect of exclusion on information or evidence from health care providers.* Beginning with the effective date of the exclusion, we will not consider the provider's medical source statements, opinions on issues reserved to the Commissioner, or other evidence prepared for the purpose of assisting a claimant or beneficiary in demonstrating disability. We will consider information or evidence derived from the services of an excluded medical source only when those services were rendered before the effective date of the exclusion.

(d) *Effect of exclusion on the records of the excluded representative.* An exclusion under this section will not be construed as having the effect of limiting access by a claimant, beneficiary, State disability determination agency, or us to records maintained by the excluded representative for services provided to a claimant or beneficiary before the effective date of an exclusion.

(e) *Length of exclusion.* We will exclude an individual for a period of five years, ten years or permanently.

(1) The minimum length of time for an exclusion will be:

(i) Five years if an individual has been subject to one excluding event as stated in paragraph (a) of this section;

(ii) Ten years if an individual has been subject to two separate excluding events as stated in paragraph (a) of this section (one of those events may have occurred before December 14, 1999); and

(iii) Permanent exclusion if an individual has been subject to three or more excluding events as stated in paragraph (a) of this section (one or two of those events may have occurred before December 14, 1999).

(2) Notwithstanding the time periods set forth in (e)(1) of this section, we shall impose a permanent exclusion upon the first or second excluding event if two or more of the following exist:

(i) The criminal sentence is for five or more years of incarceration and/or probation;

(ii) The criminal sentence includes payment of restitution to us in an amount equal to or more than $30,000;

(iii) The criminal conviction includes five or more separate violations of law;

(iv) The assessment of civil monetary penalties is equal to or more than $50,000;

(v) The assessment of civil monetary penalties was based on five or more violations of law;

(vi) The individual has been convicted of fraud, making false statements, or misrepresentations in any other government program or has been administratively determined to have committed such acts;

(vii) A State licensing authority has revoked or suspended any license issued to the individual in the past for fraud, false statements or misrepresentations; or,

(viii) The individual failed to comply with section 416.903b(v).

(f) *Exclusion determination.* The Inspector General is responsible for providing us with pertinent documentation regarding the excluding event within 45 days of the conviction or of the date upon which the determination under section 1129a of the Act becomes final. The information supplied by the Inspector General should, whenever practical, include the charging documents, plea agreements, agreements for deferred adjudication or pre-trial diversion, judgments of conviction, and in cases decided under section 1129a of the Act, a copy of the final decision that imposes civil monetary penalties. When we obtain evidence that an individual meets one or more of the criteria in paragraph (a) of this section, we will make a proposed determination to exclude that individual.

(1) We will use all of the information that we have collected.

(2) Based on this information, we will prepare a proposed determination that explains the reasons why we believe the individual should be excluded. Once we determine that the individual meets the criteria for exclusion, we will provide the individual with notice of the date on which the exclusion takes effect. We will also notify the individual of his or her right to appeal the determination to an administrative law judge and his or her right to request waiver of the exclusion.

(3) The exclusion determination will become effective 35 days after it is issued unless a request for hearing is filed as described in paragraph (i) of this section or a request for waiver is made.

(4) If the individual requests a waiver of the proposed exclusion, that individual must submit to us a written statement and any relevant documentary evidence as required in paragraph (h) of this section. The statement and evidence to support the request for waiver must be submitted within 30 days of receiving the notice of proposed exclusion. We assume that the individual will receive the notice five days after the date that the notice of proposed exclusion is mailed.

(g) *Notice of proposed exclusion.* We will send the notice of proposed exclusion to the individual's last known address by certified mail. This notice will provide the following information:

(1) The basis for exclusion;

(2) The effect of the exclusion;

(3) The proposed effective date of the exclusion;

(4) The proposed period of exclusion; and

(5) The procedure and timeframe by which the individual may object to the exclusion and submit a written statement and relevant documents.

(h) *Waiver of exclusion.* We may waive the exclusion of an individual if we determine that he or she is the sole source of essential services in a community. We will consider only the location in which the infraction(s) took place in our determination. We will not consider situations where the party has moved to a remote location after the excluding event. Our decision concerning waiver of the exclusion shall not be subject to review.

(i) *Right to a hearing before an administrative law judge.* If an excluded individual is dissatisfied with our determination to exclude, the individual may request a hearing. The Associate Commissioner for Hearings and Appeals, or his or her delegate, will appoint an administrative law judge to conduct the hearing.

(1) The request for a hearing must be made within 30 days of the date that the excluded individual receives the determination to exclude.

(2) The individual must submit, with the request for a hearing, all exhibits that the individual wants to be received into the record, a list of any witnesses whom the individual intends to call at the hearing, and a statement of the issues being raised.

(3) A failure to submit a timely request for hearing, evidence, or witness list may be excused for good cause. If there is an untimely submission of a request for hearing and the administrative law judge does not find that there is good cause to excuse the untimely filing, the administrative law judge will dismiss the request for hearing. If there is an untimely submission of evidence or a witness list and the administrative law judge finds that there is no good cause to excuse the untimely filing, the administrative law judge will not enter such evidence into the record and will not permit the witnesses to testify at the hearing.

(j) *Disqualification of administrative law judge.* An administrative law judge shall not conduct a hearing if he or she is prejudiced or partial with respect to any party or has any interest in the matter pending for decision. The excluded individual has the right to object to the administrative law judge assigned to hear the individual's appeal. The individual must inform the administrative law judge, in writing and at his or her earliest opportunity, of the objection. The administrative law judge will consider the objection and decide whether to proceed with the hearing or withdraw. If he or she withdraws, the Associate Commissioner for Hearings and Appeals, or his or her delegate, will appoint another administrative law judge to conduct the hearing.

(k) *Issue before the administrative law judge.* The administrative law judge may only decide whether the basis for an individual's exclusion exists and whether the length of exclusion meets

the requirements of paragraph (e) of this section. The administrative law judge has no authority to review the factual or legal conclusions of the conviction or determination that is the basis for the determination to exclude.

(l) *Pre-Hearing procedures.* An administrative law judge may dismiss any hearing request that fails to state either an issue of disputed material fact or law regarding a matter that is subject to review; *i.e.*, whether the underlying conviction or civil monetary penalty exist. If the individual's hearing request and supporting documentation does not reveal the existence of a material factual or legal dispute, the administrative law judge will issue an order to show cause why the hearing request should not be dismissed. The individual must respond to the order to show cause 30 days from the date of receipt, which will be presumed to be five calendar days from the date of mailing. The administrative law judge will decide whether a material factual or legal dispute exists and will either dismiss the hearing request or set a date for the hearing.

(m) *Hearing procedures.* The procedures in §§ 404.936–404.938, 404.944, 404.948–404.949, 404.950(c–e), 404.953(a), and 404.957(a–b), 404.961 will apply to the hearing before the administrative law judge. If the administrative law judge dismisses a case, the administrative law judge may, within 60 days of the dismissal, vacate such dismissal if good cause exists.

(n) *Appeals Council review.* The Appeals Council may, on its own motion and within 60 days of the issuance of an administrative law judge's decision or dismissal, initiate review of the administrative law judge's decision or dismissal. We or the excluded individual may request the Appeals Council to exercise its authority to take own motion review. §§ 404.970(a), 404.973–404.975, 404.976(a) and (b)(2), will apply to the Appeals Council review of an administrative law judge's decision or dismissal. The Appeals Council will issue a decision or remand the case to the administrative law judge. The Appeals Council may affirm, modify, or reverse the administrative law judge's decision. A copy of the Appeals Council's decision will be sent to the excluded individual at his or her last known address.

(o) *Effect of Appeals Council review on exclusion.* Unless the Appeals Council reviews the decision or dismissal, the administrative law judge's decision or dismissal shall become the Commissioner's final decision 60 days after it is issued. If the Appeals Council decides to review the administrative law judge's decision within 60 days from the date it is issued, and the Appeals Council issues a decision, it will become the Commissioner's final decision.

(p) *Judicial review.* The excluded individual has the right to file a civil action in a Federal district court within 60 days of the date of the Commissioner's final decision. The excluded individual shall serve a copy of any civil action on the Commissioner at 6401 Security Boulevard, Baltimore, Maryland 21235–0001. Sections 404.983–404.984 will apply to any cases remanded by a Federal court.

(q) *Termination of exclusion.* (1) An individual excluded from participation under this section may request that we terminate an exclusion:

(i) At the end of the minimum period of exclusion;

(ii) If the individual becomes the sole source of essential services in a community; or

(iii) If the judgement or conviction that is the basis of the exclusion is set aside or expunged.

(2) We may terminate the exclusion if we determine, based on the conduct of the excluded individual that occurred after the date of the notice of exclusion, or which was unknown to us at the time of the exclusion, that:

(i) There is no basis for a continuation of the exclusion; and

(ii) There are reasonable assurances that the types of actions that formed the basis for the original exclusion have not recurred and will not recur.

(3) Our decision regarding termination of exclusion is not subject to review.

(r) *Penalties are not exclusive.* Exclusion imposed under this section is in addition to any other penalties or sanctions prescribed by law.

(s) *Notice to State agencies and the public.* (1) We will notify the State agencies employed for the purpose of making disability determinations of the exclusion of an individual from participating in Social Security programs when the Commissioner has issued a final decision to exclude. We will provide the following information:

(i) The facts and circumstances of the exclusion of the individual; and

(ii) The period that the exclusion will be in effect.

(2) We will also notify the state agencies of the fact and circumstances of each termination of exclusion made under paragraph (q) of this section. We will also provide the public with appropriate notice of individuals or entities who have been excluded from participation in our programs.

(t) *Notice to State licensing authorities.* We will notify appropriate State or local licensing agencies or other licensing authorities when the Commissioner has issued a final decision to exclude. We will provide those agencies or authorities with the facts and circumstances of the exclusion. We will also request that an appropriate investigation in accordance with State law be conducted, that appropriate sanctions be invoked, and that the State or local licensing agency or other licensing authority keep us currently and fully informed of their actions in response to our request.

(u) *Definitions.* As used in this section—

(1) *Individual* means any representative or health care provider.

(2) *Representative* will have the same meaning as stated in section 404.1703 of this part.

(3) *Health care provider* means any person or entity that employs a person or persons who would be considered a medical source.

(4) *Medical source* means any health care provider who is defined under section 404.1513(a) and (d)(1) of this part.

(5) *Act* means the Social Security Act.

(6) *Social security programs* means the program providing for monthly insurance benefits under title II of the Act and the program providing for monthly supplemental security income payments under title XVI of the Act (including State supplementary payments that we make.)

(7) *Sole source of essential services in a community* means that, in the case of health care providers, no other health care providers who perform similar services or, in the case of representatives, no other representatives who perform similar services exist within a 50 mile radius of the limits of the town, county or city in which the infraction took place.

(8) *Convicted* means:

(i) A judgment of conviction that has been entered against the individual by a Federal, State, or local court, except if the judgment of conviction has been set aside or expunged;

(ii) A finding of guilt against the individual by a Federal, State or local court;

(iii) A plea of guilty or nolo contendere by the individual has been accepted by a Federal, State or local court; or

(iv) The individual has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgement of conviction has been withheld.

(v) *Reporting requirements.* Any individual participating in or seeking to participate in any Social Security programs will inform us by letter, as soon as practicable, of any excluding event stated in paragraph (a) of this section. If the individual is a health care provider the letter must be sent to the following address: Social Security Administration, Office of Disability and Income Security Programs, Section 1136 Exclusion, Room 4634 Annex Building, 6401 Security Boulevard Baltimore, MD 21235–6401. If the individual is a representative, the letter must be sent to the following address: Social Security Administration, Office of Hearings and Appeals, Attention Special Counsel Staff, 5107 Leesburg Pike, Suite 1605, Falls Church, VA 22041. This letter must include a copy of the conviction, judgment, or administrative determination. The individual making such a report to us must comply with any further requests that we make for information regarding the reported matter.

[FR Doc. 04–15077 Filed 7–1–04; 8:45 am]
BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 49

[REG–137076–02]

RIN 1545–BB04

Excise Taxes; Communications Services

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document requests information from the public on issues that the IRS may address in proposed regulations relating to the tax on amounts paid for communications services. All materials submitted will be available for public inspection and copying.

DATES: Written and electronic comments must be received by September 30, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–137076–02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–137076–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–137076–02).

FOR FURTHER INFORMATION CONTACT: Concerning submissions generally, the Regulations Unit, (202) 622–3628; concerning the proposals, Cynthia McGreevy (202) 622–3130 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 4251 imposes tax on amounts paid for certain communications services, including local and toll telephone service. Section 4252(a) provides that local telephone service means the access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system. Section 4252(b)(1) provides that toll telephone service includes a telephonic quality communication for which there is a toll charge that varies in amount with the distance and elapsed transmission time of each individual communication. Section 4252(b)(2) provides that toll telephone service also includes a service that entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radio telephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located.

A tax on communications services has existed for over 100 years. The communications services that currently are subject to the tax are defined in section 4252, which was enacted in its current form in 1965. That section describes the local and long distance telephone service sold under the 1965 Federal Communications Commission rules. Existing Treasury regulations do not reflect the 1965 statutory change.

Sections 4252(a) and (b) define local and toll telephone service in terms of telephonic or telephonic quality communication, which means voice quality communication. Since 1965, numerous communications services have been developed and marketed, the methods of transmission have expanded, and the industry has been deregulated.

As a result of these changes, questions have arisen concerning the application of section 4251 to certain communications services that were not available in 1965. In response to these questions, Treasury and the IRS are considering proposing regulations that would revise the existing regulations to reflect changes in technology.

The test for taxability under section 4251 is whether a service for which an amount is paid is a communications service described in section 4252. The purpose of this ANPRM is to solicit information from the public on how present technology should be treated within the description of telephonic or telephonic quality communication in the definitions of local and toll telephone service under section 4252.

To ensure that any new regulations accurately reflect the state of today's communications services industry, Treasury and the IRS request that communications services providers and other interested parties submit comments and suggestions describing the various technologies, services, and methods of transmission currently available for transmitting data and voice communications and how they should be treated under section 4251.

Special Analysis

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

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–15125 Filed 7–1–04; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Mobile–03–013]

RIN 1625–AA87 (Formerly 1625–AA00)

Security Zone; Bayou Casotte, Pascagoula, MS

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing its notice of proposed rulemaking concerning the establishment of a permanent security zone for the waters of Bayou Casotte around the Chevron Pascagoula refinery.

Under the Maritime Transportation Security Act of 2002, owners or operators of this facility will be required to take specific action to improve facility security. As such, a security zone around this facility will no longer be necessary under normal conditions.

DATES: This notice of proposed rulemaking is withdrawn on July 2, 2004.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Carolyn Beatty, Operations Department, Marine Safety Office, Mobile, AL, at (251) 441–5771.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2003, the Coast Guard published a notice of proposed rulemaking entitled "Security Zone; Bayou Casotte, Pacagoula, MS" in the **Federal Register** (68 FR 40231). This proposed rule concerned the establishment of a permanent security zone for the waters of Bayou Casotte around the Chevron Pascagoula refinery. The proposed security zone would have protected the Chevron Pascagoula refinery, persons, and vessels from subversive or terrorist acts. Entry of persons or vessels into the security zone would have been prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

Withdrawal

Under the authority of the Maritime Transportation Security Act of 2002, the Coast Guard published a final rule on October 22, 2003 entitled "Facility Security" in the **Federal Register** (68 FR 60515) that established 33 CFR part 105. That final rule became effective November 21, 2003, and provides security measures for certain facilities, including the Chevron Pascagoula Refinery. Section 105.200 of 33 CFR requires owners or operators of this facility to designate security officers for facilities, develop security plans based on security assessments and surveys, implement security measures specific to the facility's operations, and comply with Maritime Security Levels. Under 33 CFR 105.115, the owner or operator of this facility must, by December 31, 2003, submit to the Captain of the Port, a Facility Security Plan as described in subpart D of 33 CFR part 105, or if intending to operate under an approved Alternative Security Program as described in 33 CFR 101.130, a letter signed by the facility owner or operator stating which approved Alternative Security Program the owner or operator intends to use. Section 105.115 also requires the facility owner or operator to be in compliance with 33 CFR part 105 on or before July 1, 2004. As a result of these enhanced security measures, the security zone around the Chevron Pascagoula Refinery will no longer be necessary under normal conditions.

This action is taken under the authority of 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

Dated: June 21, 2004.

G.T. Croot,

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

[FR Doc. 04–15114 Filed 7–1–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AI95

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 402

[ID. 061804C]

RIN 0648–AQ69

Joint Counterpart Endangered Species Act Section 7 Consultation Regulations

AGENCIES: Fish and Wildlife Service, Interior; and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule; availability of environmental assessment; opening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries), (jointly, the Services), announce the availability of the environmental assessment for the Interagency Consultation on Regulatory Actions Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Counterpart Regulations, and the opening of a comment period on the environmental assessment. The Services are evaluating the environmental effects of establishing counterpart regulations pursuant to Section 7 of the Endangered Species Act of 1973, as amended (ESA). The proposed counterpart regulations were published in the **Federal Register** on January 30, 2004 (69 FR 4465) after coordination with the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Agriculture.

We are opening a comment period to allow all interested parties to comment on the environmental assessment. Comments should be directed to the adequacy of the environmental assessment, and should not address issues related to the proposed rule itself. Comments previously submitted on the proposed rule need not be resubmitted as they will be incorporated into the public record and will be fully considered in the final rule.

DATES: Comments on this environmental assessment must be received by July 23, 2004, to be considered in the final decision.

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

- E-mail: *PesticideESARegulations@fws.gov*. Include in the subject line the following identifier: RIN 1018–AI95; RIN 0648–AQ69. Please also include Attn: "1018–AI95" and your name and return address in your Internet message.
- Mail: Assistant Director for Endangered Species, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203; or Chief of the Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland 20910.
- Federal e-rulemaking Portal: *http:www.regulations.gov*.
- Fax: Gary Frazer, FWS, 703/358–2229; or Phil Williams, NOAA Fisheries, 301/713–0376.

The FWS has agreed to take responsibility for receipt of public comments and will share all comments it receives with NOAA Fisheries and EPA. Comments and materials received in conjunction with this environmental assessment will be available for inspection, by appointment, during normal business hours at the above FWS address.

Electronic copies of this environmental assessment may be obtained from the FWS World Wide Web site at: *http://endangered.fws.gov/consultations/pesticides/index.html*. Written copies of this environmental assessment may be obtained from the Assistant Director for Endangered Species, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Gary Frazer, Assistant Director for Endangered Species, at the above FWS address (Telephone 703/358–2171,

Facsimile 703/358–2229) or Phil Williams, Chief, Endangered Species Division, NOAA Fisheries, 1315 East-West Highway, Silver Spring, MD 20910 (301/713–1401; facsimile 301/713–0376).

SUPPLEMENTARY INFORMATION:

Background

Counterpart regulations, as generally described at 50 CFR 402.04, provide an optional alternative to the existing section 7 consultation process described in 50 CFR part 402, subparts A and B. Counterpart regulations complement the general consultation regulations in part 402 by allowing individual Federal agencies to "fine tune" the general consultation framework to reflect their particular program responsibilities and obligations. The proposed counterpart regulations published in the **Federal Register** on January 30, 2004 (69 FR 4465), would establish new methods of interagency coordination between EPA and the Services and create two new, optional, alternative approaches for EPA to fulfill its obligations to ensure that its actions under FIFRA are not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat.

We considered two alternatives, as presented in the environmental assessment. Finalizing the proposed counterpart regulation is the preferred alternative. Adopting this preferred alternative would eliminate the requirement for EPA to obtain written concurrences from the Services whenever EPA makes a "not likely to adversely affect" determination (for listed species or critical habitats) for any FIFRA action. This preferred alternative would also result in a new alternative approach to formal consultations whenever EPA makes a likely to adversely affect determination (for listed species or critical habitats) for any FIFRA action. The "no action" alternative would leave the current section 7 consultation process in place.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 24, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

John H. Dunnigan,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 04–15051 Filed 7–1–04; 8:45 am]

BILLING CODE 3510–22–P; 4310–55–P

Notices

Federal Register
Vol. 69, No. 127
Friday, July 2, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Chequamegon-Nicolet National Forests, Wisconsin, Lakewood/Laona Plantation Thinning EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to thin approximately 10,557 acres (294 stands) of plantations across the Lakewood/Laona Ranger District of the Chequamegon-Nicolet National Forests. Most plantations consist mainly of red pine with some white spruce and lesser amounts of white pine. Limited amounts of other species may also be found in some stands. The purpose of this proposal is to maintain and enhance the growth and vigor of trees within treatment areas while providing commercial timber products. No road reconstruction or new road construction is proposed. All activities would likely occur within six years of the decision date.

DATES: Comments concerning the scope of the analysis must be received within 14 days of the publication of this notice in the **Federal Register**. The draft environmental impact statement is expected by October 2004 and the final environmental impact statement is expected by March 2005.

ADDRESSES: Send written comments to Joel H. Skjerven, District Ranger, Lakewood/Laona Ranger District, 15085 State Rd 32, Lakewood, Wisconsin 54138, or e-mail your comments to: *comments-eastern-chequamegon-nicolet-lakewood@fs.fed.us*

FOR FURTHER INFORMATION CONTACT: Paul Sweeney, Project Manager, at the above address, or call (715) 276–6333.

SUPPLEMENTARY INFORMATION: *Purpose and Need for Action:* The purpose of the proposed action is to maintain stand health and vigor by applying treatments to achieve desired stocking levels while providing a sustained yield of wood products.

This project is designed to promote tree growth and vigor over time by developing a wide range of stands over a large portion of the Forests and to allow for flexibility in applying treatments as needed between 2005 and 2011. Thinning these stands would:

- Provide terrestrial ecosystems in healthy, diverse, and productive conditions (Forest Plan, Goal 1.4, p. 1–3) by preventing insect and disease problems associated with overstocked stands and enhancing diameter growth for strength and protection against wind and snow damage.
- Contribute toward satisfying demand for wood products and special forest products through environmentally responsible harvest on National Forest System lands (Forest Plan, Goal 2.5, p. 1–6).
- Contribute toward the species and product output specified in the Forest Plan (Forest Plan, Appendix GG)

The need for treatment was identified when existing conditions were compared with Forest Plan desired future conditions. Based on data collected (field exam in 2003, project file), the identified red pine and white spruce plantations will either exceed or will be close to exceeding desired stocking levels within the next 10 years.

Proposed Action

The project is designed to thin approximately 10,557 acres (294 stands) of plantations across the Lakewood/Laona Ranger District of the Chequamegon-Nicolet National Forests. Most plantations consist mainly of red pine with some white spruce and lesser amounts of white pine. Limited amounts of other species may be found in some stands. The purpose of this proposal is to maintain and enhance the growth and vigor of trees within treatment areas while providing commercial timber products. All stands in the proposed action will be accessed from existing Forest roads; there will be no construction or reconstruction of roads.

Responsible Official

Anne F. Archie, Forest Supervisor, 68 S. Stevens St., Rhinelander, Wisconsin 54501 is the Responsible Official.

Nature of Decision To Be Made

The Forest Service must decide whether it will implement this proposal, an alternative design that moves the area towards the desired condition, or not implement any project at this time.

Scoping Process

In April 2003, this vegetation management project was included in the Chequanegon-Nicolet National Forests' Schedule of Proposed Actions, which was posted on the Chequanegon-Nicolet National Forests' internet website and mailed to interested parties. In June of 2004, a scoping letter for the proposed vegetation management project was mailed to 677 individuals, groups, organizations, tribes, and Federal, State, and local agencies. The scoping letter was sent to those who expressed interest in the proposal, those who owned property adjacent to the project area, and to agencies with responsibilities for local resource management. This notice of intent invites additional public comment on this proposal and initiates the preparation of the environmental impact statement. Due to the extensive scoping effects already conducted, no scoping meeting is planned. The public is encouraged to take part in the planning process and to visit with Forest Service officials at any time during the analysis and prior to the decision. While public participation is this analysis is welcome at any time, comments received within 14 days of the publication of this notice will be especially useful in the preparation of the draft environmental impact statement. The scoping process will include identification of potential issues, in depth analysis of significant issues, development of alternatives to the proposed action, and determination of potential environmental effects of the proposal and alternatives.

Preliminary Issues

Two preliminary issues have been identified for this proposal as follows: (1) Thinning and associated activities in stands along segments of the National Eligible Wild, Scenic, and Recreational (WSR) Peshtigo River and North Branch Peshtigo River could adversely affect

WSR values for those segments. (2) Thinning and associated activities could have temporary adverse impacts on bird habitats.

Comment Requested

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in, or affected by, the proposed vegetation management activities.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act 15 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.)

Dated: June 18, 2004.

Anne F. Archie,

Forest Supervisor, Chequamegon-Nicolet National Forests.

[FR Doc. 04–15095 Filed 7–1–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Madison-Beaverhead Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Beaverhead-Deerlodge National Forest's Madison-Beaverhead Resource Advisory Committee will meet on Thursday, July 22, 2004, from 10 a.m. until 4 p.m. in Alder, Montana, and on Tuesday, August 24, 2004, in Dillon, Montana, for business meetings. The meetings are open to the public.

DATES: The meeting dates are:

1. July 22, 2004, 10 a.m. to 4 p.m., Alder, MT.

2. August 24, 3004, 10 a.m. to 4 p.m., Dillion, MT.

ADDRESSES: The meeting locations are:

1. Alder—Fire Department Hall, south of Highway 287, Alder, MT 59710.

2. Dillion—4H Building, Beaverhead County Fairgrounds, Railroad Street, Dillion, MT 59725.

FOR FURTHER INFORMATION CONTACT: Thomas K. Reilly, Designated Forest Official (DFO), Forest Supervisor, Beaverhead-Deerlodge National forest, at (406) 683–3973.

SUPPLEMENTARY INFORMATION: Agenda topics for these meetings include hearing and deciding on proposals for projects to fund under Title II of Pub. L. 106–393, hearing public comments, and other business. If the meeting locations change, notice will be posted in local newspapers, including the Dillon Tribune and the Montana Standard.

Dated: June 28, 2004.

Thomas K. Reilly,

Forest Supervisor.

[FR Doc. 04–15068 Filed 7–1–04; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: August 1, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Document Destruction—Internal Revenue Service
NISH, Vienna, Virginia (Prime Contractor) Performance to be allocated to the Nonprofit Agencies identified at the following locations:
1122 Town & Country Commons, Chesterfield, Missouri
1222 Spruce Street, St. Louis, Missouri
2218 N. Highway 67, Florissant, Missouri
3636 S. Geyer Road, Suite 300, St. Louis, Missouri
NPA: Challenge Unlimited, Inc., Alton, Illinois
24200 Tower Place, Peewaukee, Wisconsin
517 E. Wisconsin Avenue, Milwaukee, Wisconsin
6021 Durand Avenue, Suite 600, Racine, Wisconsin
Reuss Federal Plaza, Milwaukee, Wisconsin
NPA: Milwaukee Center for Independence, Inc., Milwaukee, Wisconsin
250 Marquette Avenue, Suite 560 (CID), Minneapolis, Minnesota
250 Marquette Avenue, Suite 275 (TAC), Minneapolis, Minnesota
2001 Killebrew Drive, Bloomington, Minnesota
6040 Earle Brown Drive, Brooklyn Center, Minnesota
St. Paul Headquarters, 316 N. Robert Street, Minneapolis, Minnesota
Appeals Division, 175 E. Fifth Street, Suite 600, St. Paul, Minnesota
NPA: AccessAbility, Inc., Minneapolis, Minnesota
Internal Revenue Service Field Procurement Operation
230 S. Dearborn Street, 14th Floor, Chicago, Illinois
NPA: Opportunity, Inc., Highland Park, Illinois
Contract Activity: IRS–Western Area Procurement Branch—APFW, San Francisco, California
Service Type/Location: Switchboard Operation
4th Communication Squadron, Seymour Johnson AFB, North Carolina
NPA: Coastal Enterprises of Jacksonville, Inc., Jacksonville, North Carolina
Contract Activity: AF–ACC–Seymour Johnson AFB, North Carolina

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–15100 Filed 7–1–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* August 1, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 16, and May 7, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 2656, and 25543/44) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Administrative Service, Directorate of Contracting, Fort Carson, Colorado.
NPA: Bayaud Industries, Inc., Denver, Colorado.
Contract Activity: Directorate of Contracting, Army-Carson, Fort Carson, Colorado.
Service Type/Location: Basewide Custodial Services, Holloman Air Force Base, New Mexico.
NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, Texas.
Contract Activity: AF–ACC–Holloman, Holloman AFB, New Mexico.
Service Type/Location: Custodial & Grounds Maintenance, Navy/Marine Corps Reserve Center, Richmond, Virginia.
NPA: Richmond Area Association for Retarded Citizens, Richmond, Virginia.
Contract Activity: Naval Facilities Engineering Command Contracts, Norfolk, Virginia.
Service Type/Location: Custodial Services, GSA, Federal Buildings, 201 N. Vermillion Street, Danville, Illinois, 201 S. Vine Street, Urbana, Illinois.
NPA: Child-Adult Resource Services, Inc., Green Castle, Indiana.
Contract Activity: GSA, Public Buildings Service (5P), Chicago, Illinois.
Service Type/Location: Custodial Services, U.S. Geological Survey, Willamette Research Station, Corvallis, Oregon.
NPA: Willamette Valley Rehabilitation Center, Inc., Lebanon, Oregon.
Contract Activity: U.S. Geological Survey, Menlo Park, California.
Service Type/Location: Mailing Services, Government Printing Office, Washington, DC.
NPA: Mt. Vernon-Lee Enterprises, Inc., Springfield, Virginia.
Contract Activity: Government Printing Office, Washington, DC.

This action does not affect current contracts awarded prior to the effective

date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–15101 Filed 7–1–04; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has Submitted to the Office of Management and Budget (OMB) for Clearance the Following Proposal for Collection of Information Under the Provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: U.S. Census Bureau.

Title: Current Industrial Reports (CIR) Program, Wave II. Collections.

Form Number(s): M311J, M313N, M313P, M327G, M331J, MQ311A, MQ314X, MQ315A, MQ325A, MQ325C, MQ325F, MQ333W, MQ335C, MA313F, MA313K, MA314Q, MA316A, MA321T, MA325G, MA333L, MA333P, MA334M, MA334Q, MA334S, MA335E, and MA335J.

Agency Approval Number: 0607–0395.

Type of Request: Revision of a currently approved collection.

Burden: 14,991 hours.

Number of Respondents: 12,030.

Avg Hours Per Response: 38 minutes.

Needs and Uses: The U.S. Census Bureau is requesting an extension of the mandatory and voluntary surveys in Wave II of the Current Industrial Reports (CIR) program. The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the CIR program. The CIR program focuses primarily on the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover.

Due to the large number of surveys in the CIR program, for clearance purposes, the CIR surveys are divided into "waves." One wave is resubmitted for clearance each year. Mandatory and voluntary surveys historically have been divided into separate clearance requests, making two separate clearance requests each year and six clearance requests in total for the CIR program. We are now combining the mandatory and voluntary surveys of each wave into one clearance request, reducing the total number of clearance requests from six to three, and the number of OMB submissions annually from two to one. Therefore, we are incorporating the burden hours currently contained in 0607–0206 into this request and discontinuing that clearance.

Primary users of these data are government agencies, business firms, trade associations, and private research and consulting organizations. The Federal Reserve Board uses CIR data in its monthly index of industrial production as well as its annual revision to the index. The Bureau of Economic Analysis (BEA) and the Bureau of Labor Statistics (BLS) use the CIR data in the estimate of components of gross domestic product (GDP) and the estimate of output for productivity analysis, respectively. Many government agencies, such as the International Trade Commission, Department of Agriculture, Food and Drug Administration, Department of Energy, Federal Aviation Administration, BEA, and International Trade Administration use the data for industrial analysis, projections, and monitoring import penetration. Private business firms and organizations use the data for trend projections, market analysis, product planning, and other economic and business-oriented analysis. Since the CIR program is the sole, consistent source of information regarding specific manufactured products in the intercensal years, the absence thereof would severely hinder the Federal Government's ability to measure and monitor important segments of the domestic economy, as well as the effect of import penetration.

Affected Public: Business or other for-profit.

Frequency: Monthly, quarterly, and annually.

Respondent's Obligation: Monthly and quarterly CIRs are typically voluntary. Annual reports are mandatory.

Legal Authority: Title 13 U.S.C. 61, 81, 182, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: June 28, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–15008 Filed 7–1–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has Submitted to the Office of Management and Budget (OMB) for Clearance the Following Proposal for Collection of Information Under the Provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: U.S. Census Bureau.

Title: Survey of Plant Capacity Utilization.

Form Number(s): MQ–C1.

Agency Approval Number: 0607–0175.

Type of Request: Extension of a currently approved collection.

Burden: 38,250 hours.

Number of Respondents: 17,000.

Avg Hours Per Response: 2 hours and 15 minutes.

Needs and Uses: The Census Bureau requests an extension of approval to conduct the Survey of Plant Capacity Utilization. The survey was conducted annually from 1973 through 1988 and 1996 through 2003 and biennially from 1990 through 1994. The survey provides information on use of industrial capacity in manufacturing and publishing plants as defined by the North American Industry Classification System (NAICS). It is the only source of capacity rates at the 6-digit NAICS industry levels.

Changes in capacity utilization are considered important indicators of investment demand and inflationary pressure. For these reasons, the estimates of capacity utilization are closely monitored by government and private policy makers.

The survey collects the value of fourth quarter production and the value of production that could have been achieved if operating under "full production" and "emergency production" levels. The ratios of the actual to the full and emergency production levels are the basis of the estimates of capacity utilization. The survey also collects information by shift on work patterns at actual production and full production levels.

Government and private economists, defense and emergency planners and

the academic community are the primary users of the data. Without this survey, these data users would have no industry data for analytical purposes. The Federal Reserve Board (FRB) uses the data to benchmark its monthly estimates of capacity output and utilization. In addition, FRB uses these data to analyze changes in the use of capital, capital stocks and inputs related to capacity growth. The Defense Logistics Agency (DLA) uses the data to assess industry readiness to meet demand for goods under selected national emergency scenarios pertaining to the National Defense Stockpile requirements planning process for strategic and critical materials.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: June 28, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–15010 Filed 7–1–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

AMBIT Applications and Questionnaires

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (2)(A)).

DATES: Written comments must be submitted on or before August 31, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–0266; e-mail: *dHynek@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection should be directed to: Erin Schumacher, SABIT, Department of Commerce, FCB 4100W, 14th Street & Constitution Avenue, NW., Washington, DC 20230, Phone number: (202) 482–0073; Fax number: (202) 482–2443, e-mail: *Erin_Schumacher@ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Department of Commerce's International Trade Administration, in collaboration with the International Fund for Ireland (IFI), has established the American Management & Business Internship Training (AMBIT) Program. AMBIT provides one-week to six-month training programs for managers and technical experts from Northern Ireland and the Border Counties of Ireland, thereby improving their skills while enhancing U.S. commercial opportunities in the region. AMBIT was launched in 1995 to demonstrate America's interest in supporting the peace process by encouraging economic development in Northern Ireland and the Six Border Counties of Ireland.

The U.S. Department of Commerce words in partnership with the IFI, an organization established in 1986 by the British and Irish Governments to promote economic/social progress and to encourage contact, dialog, and reconciliation in the region. The United States, the European Union, Canada, Australia, and New Zealand contribute to the IFI budget.

II. Method of Collection

Applications are sent to U.S. companies and intern candidates via facsimile, email or mail upon request by a delegated agency of the IFI. Feedback surveys are given to participating U.S. companies and interns at the completion of programs.

III. Data

OMB Number: 0625–0224.
Form Number: n/a.
Type of Review: Regular Submission.
Affected Public: Business or other non-profit, individuals (non-U.S. citizens).
Estimated Number of Respondents: 450.
Estimated Time Per Response: 1–3 hours.
Estimated Total Annual Burden Hours: 1050.
Estimated Total Annual Costs: $63,000.

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have the practical utility; (b) the accuracy of the agency's estimate of the burden (including the hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques of forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 28, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–15009 Filed 7–1–04; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Notice of Decision of the Court of International Trade: Polyethylene Terephthalate Film, Sheet, and Strip from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of the Court of International Trade.

SUMMARY: On June 18, 2004, the Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) redetermination to subject Polyplex Corporation Limited (Polyplex) to the antidumping duty (AD) order on Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India. *See Dupont Teijin Films USA, LP, Mitsubishi Polyester Film of America,*

LLC, and Toray Plastics (America), Inc. v. United States and Polyplex Corporation Limited, USCIT Slip Op. 04–70 (June 18, 2004), Court No. 02–00463 (*Dupont Teijin III*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *The Timken Company v. United States and China National Machinery and Equipment Import and Export Corporation*, 893 F. 2d 337 (Fed. Cir. 1990) (*Timken*), the Department is publishing this notice of the CIT's decision in *Dupont Teijin III*.

EFFECTIVE DATE: June 28, 2004.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Jeffrey Pedersen at (202) 482–5193 or (202) 482–2769, respectively; AD/CVD Enforcement, Office 4 Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In the investigative stage of this proceeding, the Department excluded Polyplex, a company with an AD margin greater than *de minimis*, from the AD order on PET film from India based on a zero percent AD cash deposit rate. The Department calculated the zero percent cash deposit rate by reducing the AD margin by the export subsidies found in the companion countervailing duty (CVD) investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 Fed. Reg. 34899, 34901 (May 16, 2002), and accompanying *Issues and Decision Memorandum* (*Final Determination*), as amended, 67 Fed. Reg. 44175 (July 1, 2002). The plaintiffs in the Court proceeding under consideration here filed a motion for judgement upon the agency record contesting the Department's final AD determination. The plaintiffs claimed that the Department improperly excluded Polyplex from the AD order on PET film from India because Polyplex's dumping margin, before adjusting the company's AD cash deposit rate for CVD export subsidies, is 10.34 percent. The Court agreed with the plaintiffs, noting that the Department cannot exclude an exporter from an order because its cash deposit rate is zero. *See Dupont Teijin Films USA, LP, Mitsubishi Polyester Film of America, LLC, and Toray Plastics (America), Inc. v. United States and Polyplex Corporation Limited*, 273 F. Supp. 2d 1347, 1352 (July 9, 2003) (*Dupont Teijin I*). However, because the Department accounted for CVD export subsidies by adjusting the AD cash deposit rate, rather than U.S. price, as required by 19 U.S.C. § 1677a, the Court stated that "{u}pon remand, Commerce must calculate Polyplex's dumping margin after making the adjustments to export price required by 19 U.S.C. § 1677a and Commerce's reasonable interpretation thereof. If Commerce continues to calculate a dumping margin of 10.34 percent for Polyplex, Polyplex must be subject to the antidumping duty order ... ." *See Dupont Teijin I*, 273 F. Supp. 2d at 1352.

On August 11, 2003, the Department issued its *Final Results of Redetermination Pursuant to Court Remand* in which it explained that countervailing duties are imposed upon the issuance of a countervailing duty order. At the time that the Department issued its *Final Determination*, the order in the companion CVD investigation had not yet been issued. Thus, the Department argued that Polyplex's sales were not subject to a countervailing duty order. Therefore, the Department contended that its decision in the *Final Determination* not to increase U.S. price by the amount of the export subsidies determined in the companion CVD investigation is consistent with 1677a(c)(1)(C), which requires the Department to increase U.S. price by the amount of any countervailing duty *imposed* on the subject merchandise to offset an export subsidy. Because Polyplex's dumping margin, before taking into account export subsidies, is 10.34 percent, the Department, pursuant to the Court's remand order, stated that Polyplex will be subject to the AD order on PET film from India.

In *Dupont Teijin Films USA, LP, Mitsubishi Polyester Film of America, LLC, and Toray Plastics (America), Inc., v. United States and Polyplex Corporation Limited*, 297 F. Supp. 2d 1367 (*Dupont Teijin II*), the Court sustained the Department's interpretation, upon remand, of the statutory phrase "countervailing duty imposed" in the context of companion AD and CVD investigations. However, the Court again remanded this case to the Department, instructing it to: (1)"fully address Polyplex's concern that petitioners could unfairly control the respondents' fate in an AD determination and resulting AD order by filing an extension and/or alignment request in the countervailing duty investigation;" (2)"explain how it will "fairly and consistently apply its interpretation of 'imposed' when a final determination or an amended final determination issues on the same day as a countervailing duty order on the subject merchandise due to a petitioner's alignment request;" and, (3)"seek to restore the parties, as far as is possible, to the position they would have been had they been able to act on the Department's new interpretation of 'imposed,' and the court's determination in this matter, prior to the issuance of the *Amended Final Determination*." *See Dupont Teijin II*, 297 F. Supp. 2d at 1374.

On March 3, 2004, the Department issued its second *Final Results of Redetermination Pursuant to Court Remand* (*Second Remand Determination*) in which it explained that although it would likely adjust a respondents' U.S. prices for export subsidies when it simultaneously issues a final AD determination and a CVD order on the same merchandise, it is not permitted to amend a final AD determination to take into account a CVD order issued subsequent to the AD final determination. Thus, the Department concluded that it was unable to exclude Polyplex from the AD order on PET film from India. The Department also explained that the risk of petitioners manipulating the process by filing an extension and/or alignment request in the countervailing duty investigation "is slight given the uncertainty of an investigation's final results, coupled with the *extremely* unusual circumstance present here, where a foreign producer's countervailed subsidies fully accounted for its less-than-fair-value sales, thereby reducing any AD cash deposits on its imported goods to zero." *See Dupont Teijin III*, Slip Op. 04–70 at 12. The Court sustained the Department's *Second Remand Determination* in its entirety.

Notification

In its decision in *Timken*, the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish notice of a CIT decision which is "not in harmony" with the Department's determination. The CIT's decision in *Dupont Teijin III* is not in harmony with the Department's final determination in the AD investigation of PET film from India. Therefore, publication of this notice fulfills the Department's obligation under 19 U.S.C. 1516a(e). In addition, this notice will serve to begin the suspension of liquidation pending the expiration of the period to appeal the CIT's June 18, 2004, decision, or, if that decision is appealed, pending a final decision by the Federal Circuit. The Department will instruct U.S. Customs and Border Protection to suspend liquidation of, and require a cash deposit of zero percent for, PET

film exported by Polyplex that is entered, or withdrawn from warehouse, for consumption on or after June 28, 2004.

Dated: June 28, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–15226 Filed 7–1–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–805]

Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania: Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 2, 2004.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at (202) 482–0650 or David Layton at (202) 482–0371, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order or finding for which a review is requested and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On August 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 45218. On August 29, 2003, in accordance with 19 CFR 351.213(b)(2), S.C. Silcotub S.A. (Silcotub), a Romanian producer/exporter of subject merchandise, requested a review. In addition, in accordance with 19 CFR 351.222(e), Silcotub requested that the Department revoke the order with regard to Silcotub, pursuant to 19 CFR 351.222(b)(2). On September 2, 2003, United States Steel Corporation, a domestic interested party, requested reviews of Silcotub and S.C. Petrotub S.A., producers/exporters of certain small diameter carbon and alloy seamless standard, line and pressure pipe from Romania.

On September 30, 2003, the Department published a notice of initiation of administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line and pressure pipe from Romania, covering the period August 1, 2002, through July 31, 2003 (68 FR 56262). On March 31, 2004, the Department published a notice of *Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review* (69 FR 16893), extending the deadline for the issuance of the preliminary results by 90 days. The preliminary results are currently due no later than August 2, 2004.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the current partially extended time limit due to the complex nature of this review as discussed in the previous extension notice (69 FR 16893). We require additional time to address these matters through the gathering and verification of certain information.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the preliminary results by an additional 30 days until no later than August 30, 2004. We intend to issue the final results of review no later than 120 days after publication of the preliminary results notice.

Dated: June 25, 2004.

James J. Jochum,

Assistant Secretary for for Import Administration.

[FR Doc. 04–15106 Filed 7–1–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–821]

Stainless Steel Wire Rod from Italy: Final Results of Full Sunset Review of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset review of countervailing duty order of Stainless Steel Wire Rod from Italy.

SUMMARY: On August 1, 2003, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on Stainless Steel Wire Rod from Italy (68 FR 45219). Because we find that the net countervailable subsidy likely to prevail is *de minimis*, the Department is revoking this countervailing duty order.

DATES: *Effective Date:* July 2, 2004.

FOR FURTHER INFORMATION CONTACT: Hilary Sadler, Esq. or Martha Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4340 or (202) 482–5050.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

The Department's procedures for the conduct of sunset reviews are set forth in Section 751(c) of the Tariff Act of 1930, as amended (the "Act"), and 19 CFR 351.218. Guidance on methodological and analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies regarding the Conduct of Five-Year Sunset Reviews of Countervailing Duty and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

For purposes of this review, the product covered is Stainless Steel Wire Rod ("SSWR") from Italy. Certain stainless steel wire rod (SSWR or subject merchandise) comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are

manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter. Two stainless steel grades SF20T and K-M35FL are excluded from the scope of the investigation. The percentages of chemical makeup for the excluded grades are as follows:

SF20T:
Carbon—0.05 max
Manganese—2.00 max
Phosphorous—0.05 max
Sulfur—0.15 max
Silicon—1.00 max
Chromium—19.00/21.00
Molybdenum—1.50/2.50
Lead—added (0.10/0.30)
Tellurium—added (0.03 min)
K–M35FL:
Carbon—0.015 max
Manganese—0.40 max
Phosphorous—0.04 max
Sulfur—0.03 max
Silicon—0.70/1.00
Chromium—12.50/14.00
Nickel—0.30 max
Lead—added (0.10/0.30)
Aluminum—0.20/0.35

The products covered by this order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

Background

On September 15, 1998, the Department published the countervailing duty order on SSWR from Italy. *See Notice of Countervailing Duty Order: Stainless Steel Wire Rod from Italy*, 63 FR 49334 (September 15, 1998). The Department completed only one administrative review of the subject countervailing duty order. *See Stainless Steel Wire Rod From Italy: Notice of Final Results of Countervailing Duty Administrative Review*, 67 FR 63619 (October 15, 2002) (*"Administrative Review"*). Pursuant to section 751(c) of the Act and 19 CFR 351.218(c), the Department initiated a sunset review of this order by publishing notice of the initiation in the **Federal Register** 68 FR 45219 (August 1, 2003). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of a sunset review of this order.

The Department received substantive responses from Carpenter Technology Corporation,[1] (the domestic interested party), Cogne Acciai Speciali S.r.l. ("CAS"), the Government of Italy, and the European Union within the applicable deadlines specified in 19 CFR 351.218(d). *See* Response of Carpenter Technology (August 18, 2003), CAS (September 2, 2003), GOI (August 28, 2003), and the EU (August 29, 2003). However, pursuant to 19 CFR 351.218(e)(2)(i), the Department determined to conduct a full (240-day) sunset review of this order. *See Memorandum for Ronald K. Lorentzen, Re: Stainless Steel Wire Rod from Italy*, Adequacy of Respondent Interested Parties' Response to the Notice of Initiation (September 24, 2003).

In the *Issues and Decision Memorandum for the Determination under Section 129 of the Uruguay Round Agreements Act: Final Affirmative Countervailing Duty Determination: Stainless Steel Wire Rod from Italy*, October 24, 2003 ("Section 129 Memo"), the Department determined that the privatization of CAS was at arm's-length and for fair-market-value, and that allegations of broader market distortions were not sufficiently supported. Accordingly, any allocable, non-recurring subsidies granted to CAS prior to its privatization were extinguished in their entirety and, therefore, are non-countervailable. On November 7, 2003, the U.S. Trade Representative requested the Department, pursuant to section 129(b)(4) of the Uruguay Round Agreements Act, to implement the determination in the Section 129 Memo. *See Notice of Implementation under Section 129 of the Uruguay Round Agreements Act*, 68 FR 64858, (November 17, 2003). Accordingly, the Department excluded CAS from the countervailing duty order on certain stainless steel wire rod from Italy and revised the "all others rate." *Id.*, at 16.

On April 21, 2004, the Department received identical case briefs from the GOI and the EC. *See* Case Briefs from the EC and the GOI re: Sunset Review of the Countervailing Duty Investigation: Stainless Steel Wire Rod from Italy (April 19, 2004). We received no case brief or rebuttal from Carpenter Technology.

Because CAS has been excluded from the original order as a result of the Section 129 determination and is therefore no longer an interested party in this sunset proceeding, its comments will not be addressed. In addition, any comments submitted by Carpenter Technology, the EC, and the GOI pertaining to CAS or to programs specific to CAS have been rendered moot by CAS's exclusion and will not be addressed.

Analysis of Comments Received

All issues raised in this case are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated June 27, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the finding were to be revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*, under the heading "July 2004." The paper copy and electronic version of the Decision Memo are identical in content.

Determination To Revoke

Under section 751(d)(2) of the Act, in the case of a sunset review, the Department will revoke a countervailing duty order unless it determines that the countervailable subsidy would be likely to continue or recur, and the International Trade Commission ("ITC") determines that material injury would be likely to continue or recur. Based on the Department's analysis of the subsidy programs at issue in this case, we have determined that the level of subsidization likely to prevail, were the order revoked, is below the *de minimis* threshold. *See Issues and Decision Memorandum*. Therefore, as a result of

[1] Carpenter Technology, AL Tech Specialty Corporation, Republic Engineered Steels, and Talley Metals Technology, Inc. filed the original petition. Since the order, Carpenter Technology acquired Talley Metals Technology, Inc.

this sunset review, the Department finds that revocation of the countervailing duty order would not be likely to lead to continuation or recurrence of a countervailable subsidy. Pursuant to section 751(d)(2) of the Act, the Department will revoke this countervailing duty order, effective on September 15, 2003, the fifth anniversary date of publication in the **Federal Register** of the order, consistent with 19 CFR 351.222(i)(2)(i).

Notification of the ITC

As discussed in section III.B of the *Policy Bulletin*, the Department normally will provide the ITC with the net countervailable subsidy that was determined in the original investigation. However, the purpose of the net countervailable subsidy in the context of sunset review is to provide the ITC with a rate which represents the countervailable rate that is likely to prevail if the order is revoked, and the Department has therefore adjusted the investigation rate as provided under section III.B of the *Policy Bulletin*. *See* section 752(b)(1)(B) of the Act. As noted above, the rate is *de minimis*.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 28, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–15105 Filed 7–1–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No: 040628195–4195–01]

White House Initiative on Asian Americans and Pacific Islanders, President's Advisory Commission on Asian Americans and Pacific Islanders

AGENCY: Minority Business Development Agency, Department of Commerce.

ACTION: Notice of meeting.

SUMMARY: The Minority Business Development Agency (MBDA) publishes this notice to announce that the President's Advisory Commission on Asian Americans and Pacific Islanders (Commission) will be holding a public meeting to seek testimonies from individuals and organizations on ways to provide equal economic opportunities for full participation of Asian American and Pacific Islander businesses in our free market economy where they may be underserved.

DATES: The public meeting will be held on Tuesday, July 20, 2004; 1 p.m.–5 p.m. e.s.t. For members of the public who are interested in addressing the Commission, please submit your written requests by July 16, 2004. Requests for special assistance, such as sign language interpretation or other reasonable accommodations, should be submitted to Mr. Erik Wang (*See* **FOR FURTHER INFORMATION CONTACT**) no later than July 9, 2004.

ADDRESSES: The public meeting will be held at: The Enterprise Center, 4548 Market Street, Philadelphia, Pennsylvania 19139. For members of the public who are interested in addressing the Commission, please submit your request to Mr. Erik Wang, Office of the White House Initiative on AAPIs, Herbert C Hoover Building, 1401 Constitution Avenue, NW., Room 5092, Washington, DC 20230, or by fax to (202) 219–8809.

FOR FURTHER INFORMATION CONTACT: For additional information about the Commission or the public meeting, please contact: Mr. Eddy Badrina or Mr. Erik Wang, Office of the White House Initiative on AAPIs, Herbert C Hoover Building, 1401 Constitution Avenue, NW., Room 5092, Washington, DC 20230, Telephone (202) 482–3949.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the Commission's intent to conduct a public meeting on July 20, 2004. Agenda items will include, but will not be limited to: testimony from community organizations and individuals; testimony from federal agencies; administrative tasks; upcoming events; and comments from the public.

The purpose of the Commission is to advise and make recommendations to the President on ways to provide equal economic opportunities for full participation of Asian American and Pacific Islander businesses in our free market economy where they may be underserved and thus, improving the quality of life for approximately 14.5 million Asian Americans and Pacific Islanders living in the United States and the U.S.-associated Pacific Island jurisdictions, especially those who are most underserved.

Requests to address the Commission must be made in writing and should include the name, address, telephone number and business or professional affiliation of the interested party. Individuals or groups addressing similar issues are encouraged to combine comments and make their request to address the Commission through a single representative. The allocation of time for remarks will be adjusted to accommodate the level of expressed interest. Written requests must be mailed or faxed to The Office of the White House Initiative on AAPIs by July 16, 2004 (*See* **ADDRESSES**). Anyone who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Erik Wang no later than July 9, 2004 (*See* **FOR FURTHER INFORMATION CONTACT**). This meeting is open to the public.

Edith McCloud,

Associate Director for Management.

[FR Doc. 04–15013 Filed 7–1–04; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062804B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Marine Reserves Subcommittee of the Scientific and Statistical Committee (SSC) will hold a meeting, which is open to the public.

DATES: The Marine Reserves Subcommittee of the SSC will meet Monday, July 19, 2004, from 1 p.m. to 5 p.m., and Tuesday, July 20, 2004, from 8 a.m. until business for the day is completed.

ADDRESSES: The meeting will be held at NMFS Southwest Fisheries Science Center, Santa Cruz Laboratory, 110 Shaffer Road, Santa Cruz, CA 95060; telephone: (831) 420–3900.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council; telephone: (503) 820–2280 or toll free (866) 806–7204.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review the *Staff Preliminary Working Draft Document for Consideration of a Network of Marine Reserves and Marine*

Conservation Areas within the Channel Islands National Marine Sanctuary (CINMS). Specifically, the Marine Reserves Subcommittee will review the purpose and need for action, a preliminary range of alternatives, and the analytical approaches for proposed management alternatives to establish marine reserves and marine conservation areas in CINMS. CINMS and NOAA staff involved with the development of the document will be available for discussions with the Marine Reserves Subcommittee.

The Marine Reserves Subcommittee will provide the results of their review to the Council's Ad Hoc Channel Islands Marine Reserve Committee for their meeting in fall 2004. The draft CINMS document can be found at—*http://www.cinms.nos.noaa.gov/marineres/enviro_review.html*

Although non-emergency issues not contained in the meeting agenda may come before the Subcommittee for discussion, those issues may not be the subject of formal Marine Reserves Subcommittee action during this meeting. Subcommittee 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 Subcommittee's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 or toll free (866) 806–7204 at least 5 days prior to the meeting date.

Dated: June 29, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–1470 Filed 7–1–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062804D]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Technical Team (STT) will hold a work session, which is open to the public, to review proposed conservation objectives for Sacramento winter chinook and to begin compilation of an updated Historical Salmon Fishery Data document.

DATES: The work session will be held Wednesday, July 21, 2004, from 8 a.m. to 4 p.m., and Thursday, July 22, 2004, from 8 a.m. to 4 p.m.

ADDRESSES: The work session will be held at the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

Council address: Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to review a proposed harvest management matrix for Sacramento winter chinook; begin compilation of an historical summary of ocean salmon fisheries; and prioritize and schedule upcoming tasks.

Although non-emergency issues not contained in the meeting agenda may come before the STT for discussion, those issues may not be the subject of formal STT action during this meeting. STT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: June 29, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–1472 Filed 7–1–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062804A]

Fisheries of the South Atlantic; Southeastern Data, Assessment, and Review (SEDAR) South Atlantic Deepwater Snapper/Grouper Species; Tilefish and Snowy Grouper

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a SEDAR Workshop for South Atlantic Snapper/Grouper Species.

SUMMARY: The SEDAR process for the South Atlantic Snapper/Grouper Species consists of a series of three workshops: A data workshop, an assessment workshop, and a review workshop. As part of this series, a Review Workshop is being held for tilefish and snowy grouper.

DATES: The SEDAR Review Workshop for tilefish and snowy grouperwill take place July 26–30, 2004. The workshop will be held July 26, 2004, from 2 p.m. to 5:30 p.m., July 27–29, 2004, from 8:30 a.m. to 5:30 p.m., and July 30, 2004, from 8:30 a.m. to 1 p.m.

ADDRESSES: The Review Workshop will be held at the Holiday Inn Center City, 230 North College Street, Charlotte, NC 28202; telephone: (704) 335–5400.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407.

FOR FURTHER INFORMATION CONTACT: John Carmichael, SEDAR Coordinator; telephone: (843) 571–4366 or toll free 866/SAFMC–10; fax: (843) 769–4520.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the SEDAR process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes three workshops: (1) Data workshop, (2) assessment workshop, and (3) review workshop. The product of the data workshop and the assessment workshop is a stock assessment report, which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment report is independently peer reviewed

at the review workshop. The products of the review workshop are a Consensus Summary Report, which reports Panel opinions regarding the strengths and weaknesses of the stock assessment and input data, and an Advisory Report, which summarizes the status of the stock. Participants for SEDAR workshops are appointed by the Regional Fishery Management Councils. Participants include data collectors, database managers, stock assessment scientists, biologists, fisheries researchers, fishermen, environmentalists, Council members, international experts, and staff of Regional Councils, Interstate Commissions, and state and Federal agencies.

The review workshop is an independent peer review of the assessment developed during the data and assessment workshops. Workshop Panelists will review the assessment and document their consensus opinions regarding assessment issues in a Consensus Summary Report. Panelists will summarize the assessment results in an Advisory Report.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the workshop.

Dated: June 29, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–1471 Filed 7–1–04; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION ON REVIEW OF OVERSEAS MILITARY FACILITY STRUCTURE OF THE UNITED STATES

Public Meeting

AGENCIES: Commission on Review of Overseas Military Facility structure of the United States (Overseas Basing Commission).

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, section 552 of title 5 U.S.C., this serves as public notice of a meeting of the Commission on the Review of Overseas Military Facility Structure of the United States. This Commission is established by Public Law 108–132 to provide Congress and the President with a thorough study and review of matters relating to the military facility structure overseas. The law requires the report to include a proposal for an overseas basing strategy to meet current and future DOD missions. A copy of the document to be discussed at the meeting, "Options for Changing the Army's Overseas Basing" can be downloaded from *http://www.cbo.gov.*

DATES: The meeting will be held on July 14, 2004, at 10 a.m., local time.

ADDRESSES: The meeting will be held at the Congressional Budget Office, Ford House Office Building, room 483, 2nd & D Streets, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Wade Nelson, Public Affairs, (708) 204–0711.

SUPPLEMENTARY INFORMATION: Due to security considerations at the facility, attendees may be required to present a valid identification. The public meeting is physically accessible to people with disabilities.

Dated: June 29, 2004.

Patricia J. Walker,

Executive Director, Commission on Review of Overseas Military Facility Structure of the United States.

[FR Doc. 04–15178 Filed 7–1–04; 8:45 am]

BILLING CODE 6820–YK–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting a List of Importers Who Wish To Import Leno Mesh Fabric in Category 220, Produced or Manufactured in the People's Republic of China

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive requesting a list of importers who wish to import leno mesh fabric in Category 220.

FOR FURTHER INFORMATION CONTACT: Becky Geiger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

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.

Effective January 1, 2002, the United States ceased to apply quotas to bags of leno mesh fabric, classified in Harmonized Tariff Schedule of the United States (HTSUS) headings 6305, integrating this product into the General Agreement on Tariffs and Trade 1994. However, HTSUS heading 5803.90.3000, which includes the leno mesh fabric used to make such bags, continues to be subject to quota. This heading is in category 220 and is subject to a group limit when imported from China. U.S. manufacturers of bags of leno mesh fabric have been unable to obtain this fabric in sufficient quantities from domestic sources, and imports are currently unavailable due to the unavailability of quota. CITA has agreed that it is appropriate to increase the group limit to allow additional imports of leno mesh fabric. In order to issue visas for this fabric, the Government of China has requested the United States to identify importers that wish to import leno mesh fabric from China.

Importers who wish to import leno mesh fabric in Category 220 from China, and who therefore wish to be allocated a visa by the Government of China for that fabric, need to supply the following information to CITA by July 15, 2004.

Importer of leno mesh fabric, address, telephone number, fax number, E-mail address.

Leno mesh fabric bag manufacturer, address, telephone number, fax number. E-mail address.

Customs Broker for importation of leno mesh fabric, address, telephone number, fax number, e-mail address.

That information will then be supplied to the Chinese Government, which has requested this information for administrative purposes. Please send this information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th St. and Constitution Avenue, NW., Washington, DC 20230.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–15195 Filed 6–30–04; 1:38 pm]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee, Act, 5 U.S.C. App. 2 section 10(a), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting on Wednesday July 21, 2004. The meeting will take place in the first floor hearing room of the Commission's Washington, DC, headquarters, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581 from 2 to 5 p.m.

The agenda will consist of the following:

(1) Call to order and introductions

(2) Review of trends in futures industry and oversight

(3) Discussion of Federal speculative position limits for certain agricultural commodities

(4) Developments regarding various risk-management products for producers

(5) Other business

(6) Discussion of future meetings and topics

(7) Adjourn

The meeting is open to the public. The Chairman of the Advisory Committee, Commission Chairman James E. Newsome, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: Agricultural Advisory Committee, c/o Chairman James E. Newsome, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Chairman Newsome in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for oral presentations of no more than five minutes each in duration.

For further information concerning this meeting, please contact Marcia Blase at 202–418–5050.

Dated: Issued by the Commission in Washington, DC, on June 28, 2004.

Jean A. Webb.

Secretary of the Commission.

[FR Doc. 04–15092 Filed 7–1–04; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Mandatory Declassification Review Addresses

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the Information Security Oversight Office's *Classified National Security Information Directive No. 1*, this notice provides Department of Defense addresses to which Mandatory Declassification Review requests may be sent. This notice benefits the public in advising them where to send such requests for declassification review and makes administrative corrections that were previously published on December 29, 2003 (68 FR 74949).

FOR FURTHER INFORMATION CONTACT: Mr. Robert Storer, 703–601–4722.

SUPPLEMENTARY INFORMATION: The following chart identifies the offices to which mandatory declassification review requests should be addressed:

OSD/JS—Washington Headquarters Services, Chief, Declassification and Historical Research Branch, Suite 501, 201 12th Street, Arlington, VA 22202.

Army—Department of the Army, Army Declassification Activity, ATTN: TAPC–PDD, Suite 509, 4600 N. Fairfax Drive, Arlington, VA 22203–1553.

Navy—Department of the Navy, Chief of Naval Operations, N09B11, RM 1D469, 2000 Navy Pentagon, Washington, DC 20350–2000.

Air Force—Department of the Air Force, 11 CS/SCSR (MDR), 1000 Air Force Pentagon, Washington, DC 20330–1000.

Marine—Commandant of the Marine Corps, U.S. Marine Corps, 2 Navy Annex, Room 1010, Washington, DC 20830–1775.

DARPA—Defense Advance Research Project Agency, 3701 North Fairfax Dr., Arlington, VA 22203–1714.

DCAA—Director, Defense Contract Audit Agency, ATTN: CPS, 8725 John J. Kingman Rd., Ste. 2135, Ft. Belvoir, VA 22060–6219.

DIA—Defense Intelligence Agency, ATTN: D A N–1A, Rm E4–234, Washington, DC 20340–5100.

DISA—Defense Information Systems Agency, ATTN: Security Division, MPS 6, 5111 Leesburg Pike, Ste. 100, Falls Church, VA 22041.

DSS—Defense Security Service, Office of FOIA & Privacy, 1340 Braddock Place, Alexandria, VA 22314–1651.

DLA—Defense Logistics Agency, ATTN: DLA/DSS–S, 8725 John J. Kingman Rd., Ste. 2533, Ft. Belvoir, VA 22060–6221.

NIMA—National Geospatial-Intelligence Agency, 4600 Sangamore Rd., Mail Stop D–10, Bethesda, MD 20816–5000.

NSA—National Security Agency, Information Policy Office, DC323 Room S2CW113, Suite 6884, Bldg SAB2, 9800 Savage Road, Ft. George G. Meads, MD 20755–6248.

DTRA—Defense Threat Reduction Agency, ATTN: SCR, 8725 John J. Kingman Rd., Ft. Belvoir, VA 22060–6201.

EUCOM—U.S. European Command (HQ USEUCOM), Attn: ECJ1–AX (FOIA Officer), SMSgt Greg Outlaw, USAF, Unit 30400, APO, AE 09131.

SOUTHCOM—U.S. Southern Command, Attn: Mr. Marco T. Villalobos, SCJ1–A (FOIA), 3511 NW 91st Avenue, Miami, FL 33172–1217.

SOCOM—U.S. Special Operations Command, Attn: Kathryn Meeks, SOCS–SJS–SI (FOIA), 7701 Tampa Point Boulevard, MacDill AFB, FL 33621–5323.

CENTCOM—U.S. Central Command, Attn: Jacqueline J. Scott, CCJ6–DM, 7115 South Boundary Blvd, MacDill AFB, FL 33621–5101.

NORTHCOM—U.S. Northern Command, HQNORAD, USNORTHCOM/CSM, Attn: Lynn Bruns, 250 Vandenberg Street, Suite B016, Peterson Air Force Base, CO 80914–3804.

JFCOM—U.S. Joint Forces Command, Attn: Ms. Joyce Neidlinpa, Code J024, 1562 Mitscher Ave, Suite 200, Norfolk, VA 23511–2488.

PACOM—U.S. Pacific Command, Attn: Maureen Jones, USPACOM FOIA Coordinator (J042), Administrative Support Division, Joint Secretariat, Box 28, Camp Smith, HI 96861–5025.

STRATCOM—U.S. Strategic Command, 901 SAC Blvd, STE 1C15, Offutt AFB, NE 68113–6653.

TRANSCOM—U.S. Transportation Command, Chief, Resources Information, Communications, and Records Management, Attn: TCJ6–RII, 508 Scott Drive, Bldg 1961, Scott AFB, IL 62225–5357.

Dated: June 25, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–15074 Filed 7–1–04; 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 Employment of the National Ignition Facility (NIF) will meet in closed session on July 12–13, 2004, Institute for Defense Analyses, 4850 Mark Center Drive, Alexandria, VA. This Task Force will review the experimental program under development for the National Ignition Facility. NIF is a key component of the National Nuclear Security Administration's (NNSA's) Stockpile Stewardship Program to maintain the nuclear weapons stockpile without nuclear testing. The NIF is a 192-beam laser designed to achieve fusion ignition and produce high-energy-density condition approaching those of nuclear weapons. NNSA and the high-energy-density physics community have developed a plan for activation and early use of NIF which includes a goal to demonstrate ignition by 2010 and also supports high priority, non-ignition experiments required for stockpile stewardship. In this assessment, the task force will assess the proposed ignition and "non-ignition" high-energy-density experimental programs at NIF. Review the overall balance and priority of activities within the proposed plan and the degree to which the proposed program of NIF experiments supports the near and long term goals of stockpile stewardship and the overall NIF mission. Assess the potential for NIF to support the design and development of new weapons. Focus on the extent to which major stakeholders in NIF are effectively integrated into the plan.

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 these meetings, the Defense Science Board Task Force will assess the proposed ignition and "non-ignition" high-energy-density experimental programs at NIF. Review the overall balance and priority of activities within the proposed plan and the degree to which the proposed program of NIF experiments supports the near and long term goals of stockpile stewardship and the overall NIF mission. Assess the potential for NIF to support the design and development of new weapons. Focus on the extent to which major stakeholders in NIF are effectively integrated into the plan.

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 these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and (4) and that, accordingly, these meetings will be closed to the public.

Dated: June 24, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–15075 Filed 7–1–04; 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 Employment of the National Ignition Facility (NIF) will meet in closed session on August 16, 2004, Institute for Defense Analyses, 4850 Mark Center Drive, Alexandria, VA. This Task Force will review the experimental program under development for the National Ignition Facility. NIF is a key component of the National Nuclear Security Administration's (NNSA's) Stockpile Stewardship Program to maintain the nuclear weapons stockpile without nuclear testing. The NIF is a 192-beam laser designed to achieve fusion ignition and produce high-energy-density condition approaching those of nuclear weapons. NNSA and the high-energy-density physics community have developed a plan for activation and early use of NIF which includes a goal to demonstrate ignition by 2010 and also supports high priority, non-ignition experiments required for stockpile stewardship. In this assessment, the task force will assess the proposed ignition and "non-ignition" high-energy-density experimental programs at NIF. Review the overall balance and priority of activities within the proposed plan and the degree to which the proposed program of NIF experiments supports the near and long term goals of stockpile stewardship and the overall NIF mission. Assess the potential for NIF to support the design and development of new weapons. Focus on the extent to which major stakeholders in NIF are effectively integrated into the plan.

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 these meetings, the Defense Science Board Task Force will assess the proposed ignition and "non-ignition" high-energy-density experimental programs at NIF. Review the overall balance and priority of activities within the proposed plan and the degree to which the proposed program of NIF experiments supports the near and long term goals of stockpile stewardship and the overall NIF mission. Assess the potential for NIF to support the design and development of new weapons. Focus on the extent to which major stakeholders in NIF are effectively integrated into the plan.

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 these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and (4) and that, accordingly, these meetings will be closed to the public.

Dated: June 24, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–15076 Filed 7–1–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Notice Authorizing Schoolwide Programs To Consolidate Federal Education Funds and Exempting Them From Complying With Statutory or Regulatory Provisions of Those Programs

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of authorization and exemption of schoolwide programs.

SUMMARY: The U.S. Secretary of Education (the Secretary) authorizes a schoolwide program under Part A of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), to consolidate funds from Federal education programs that the Secretary administers and exempts the school from complying with many statutory or regulatory provisions of those programs, if the intent and purposes of the programs are met in the schoolwide program. This notice identifies which Federal education program funds and services may be incorporated in a schoolwide program and provides guidance on

satisfying the intent and purposes of the programs incorporated.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Jackson, Ed.D, Acting Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB–6, Washington, DC 20202–6132. Telephone (202) 260–0826.

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 contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Schoolwide Programs In General

A schoolwide program is a comprehensive reform strategy to improve the academic achievement of all students in the school, particularly the lowest-achieving students. Schoolwide programs grew out of research about what makes schools work for disadvantaged students. Repeated findings show that staff in highly successful high poverty schools develop and carry out comprehensive schoolwide reform strategies, establish safe environments that are conducive to learning, and support enriched instruction in an expanded core of subjects for all students. Over the years, researchers have documented that, when the entire school is the target of change, schools serving even the most academically challenged students can achieve success.

Section 1114 of Title I authorizes a school with a concentration of poverty of at least 40 percent to use funds under Title I, Part A, along with other Federal, State and local funds, to operate a schoolwide program and upgrade the entire educational program in the school in order to improve the academic achievement of all students, particularly the lowest-achieving students. This is in contrast to a Title I targeted assistance program, in which Part A funds may be used only for supplementary educational services for eligible children identified as being most at risk of not meeting State standards. The school operating a schoolwide program may also combine other Federal education funds (*see* the heading "Inclusion of Other Federal Education Program Funds").

There are three core elements of a schoolwide program. (1) A school operating as a schoolwide program must conduct a comprehensive needs assessment of the entire school to determine the performance of its students in relation to the State's challenging academic content and achievement standards. (2) Using data from its needs assessment, the school must then develop a comprehensive plan to improve teaching and learning in the school, particularly for those students farthest away from demonstrating proficiency on the State's academic content and achievement standards. The comprehensive plan must (a) include schoolwide reform strategies that are research-based and designed to strengthen the core academic program so that all students attain proficient and advanced levels of achievement; (b) provide for instruction by highly qualified teachers and contain strategies to attract them; (c) provide high-quality and ongoing professional development for staff and parents; (d) include strategies to increase parental involvement; (e) provide activities to ensure that students who experience difficulty attaining proficiency receive effective and timely additional assistance; (f) include plans for assisting preschool students in the successful transition from early childhood programs to elementary schoolwide programs; and (g) provide for coordination and integration of Federal, State and local services and programs. (3) A school operating a schoolwide program must annually evaluate the implementation of, and the results achieved by, the schoolwide program and revise the plan as necessary based on the results of the evaluation to ensure continuous improvement of students in the school. The final Title I regulations that were published in the **Federal Register** on December 2, 2002 (67 FR 71710) explain schoolwide programs in greater detail.

A school operating a schoolwide program is not required to identify particular students as eligible to participate in the schoolwide program, or demonstrate that the services provided with Title I, Part A funds are supplemental to services that would otherwise be provided. The school is also not required to maintain separate fiscal accounting records, by program, that identify the specific activities supported by those particular funds, but must maintain records that demonstrate that the schoolwide program addresses the intent and purposes of each of the Federal programs whose funds were consolidated to support the schoolwide program. Each State educational agency (SEA) must encourage schools to consolidate funds from Federal, State and local sources in their schoolwide programs, and must modify or eliminate State fiscal and accounting barriers so that these funds can be more easily consolidated.

Inclusion of Other Federal Education Program Funds

A school that operates a schoolwide program may consolidate funds from other Federal education programs in addition to Title I, Part A funds to improve academic achievement throughout the school. Specifically, section 1114(a)(3)(A) of Title I authorizes the Secretary, through publication of a notice in the **Federal Register**, to permit schoolwide programs to consolidate funds from any other noncompetitive, formula grant program or any discretionary grant program administered by the Secretary and to exempt schoolwide program schools from many statutory and regulatory provisions of the programs whose funds are consolidated, if the intent and purposes of the programs are met.

Except as noted below and consistent with section 1114 of Title I and this notice, the Secretary authorizes a schoolwide program school to consolidate funds that the school receives from any Federal education program, administered by the Secretary, whose funds can be used to carry out activities in a public elementary or secondary school. This authority also extends to services, materials, and equipment purchased with those funds and provided to a public elementary or secondary school. To provide schoolwide program schools maximum discretion in using resources from Federal education programs to their best advantage, the Secretary encourages local educational agencies (LEAs), to the extent possible, to provide Federal funds directly to those schools, rather than only providing personnel, materials, or equipment. All consolidated funds and services must support the school's schoolwide plan.

This authority affords a schoolwide program school significant flexibility to better serve all students by improving the entire instructional program, rather than only providing separate services to specific target populations. The Secretary emphasizes that a school operating a schoolwide program must address the needs of all students in the school, particularly the needs of the lowest-achieving students who are members of the target population of any program that is included in the schoolwide program.

A schoolwide program school may not consolidate funds under Subpart 1

of Part B of Title I of the ESEA (Reading First) to establish reading programs for students in kindergarten through grade 3.

A schoolwide program school may consolidate funds under the following programs only as outlined below:

• *Migrant Education.* Consistent with section 1306(b)(4) of Title I and 34 CFR 200.29(c)(1) before a school operating as a schoolwide program consolidates funds received under Part C of Title I, ESEA for the education of migratory children, the school must, in consultation with parents of migratory children or organizations representing those parents, or both, first meet the unique educational needs of migratory students that result from the effects of their migratory lifestyle and those other needs that are necessary to permit those students to participate effectively in school, and must document that these needs have been met.

• *Indian Education.* Consistent with section 7115(c) of the ESEA and 34 CFR 200.29(c)(2), a school operating as a schoolwide program may consolidate funds received under Subpart 1 of Part A of Title VII of the ESEA regarding Indian education only if the parent committee established by the LEA under section 7114(c)(4) of the ESEA approves the inclusion of those funds.

• *Special Education.* Consistent with section 613 (a)(2)(D) of the Individuals with Disabilities Education Act (IDEA) and 34 CFR 200.29(c)(3), a school that operates as a schoolwide program may consolidate funds received under Part B of IDEA. However, the amount of funds consolidated may not exceed the amount received by the LEA under Part B of IDEA for that fiscal year, divided by the number of children with disabilities in the jurisdiction of the LEA, and multiplied by the number of children with disabilities participating in the schoolwide program. A school may also consolidate funds it receives for students with disabilities under section 8003(d) of the ESEA. A school that consolidates funds under Part B of IDEA or section 8003(d) of the ESEA may use those funds in its schoolwide program for any activities under its schoolwide program plan but must comply with all other requirements of Part B of IDEA, to the same extent it would if it did not consolidate funds under Part B of IDEA or section 8003(d) of the ESEA in the schoolwide program.

The Secretary notes that he does not administer the National School Lunch Program or Head Start programs. As a result, the authority to consolidate funds in a schoolwide program does not extend to those programs.

In addition, the authority to consolidate funds from other Federal programs in schoolwide program schools does not apply to funds that are allocated by formula to nonschoolwide program schools in an LEA. This is not an authority to redistribute funds among schools. Any redistribution of funds would have to be consistent with the authorizing statute.

Satisfying "Intent and Purposes"

Consistent with section 1114 of Title I, a school that consolidates and uses, in a schoolwide program, funds from any other Federal program administered by the Secretary, except Reading First, is not required to meet most statutory or regulatory requirements of the program applicable at the school level, but must meet the intent and purposes of that program to ensure that the needs of the intended beneficiaries are met. Such a school must be able to demonstrate that its schoolwide program contains sufficient resources and activities to reasonably address the intent and purpose of included programs, particularly as they relate to the lowest-performing students.

The school is not required to maintain separate fiscal accounting records, by program, that identify the specific activities supported by those particular program funds. It must, however, maintain records that demonstrate that the schoolwide program as a whole addresses the intent and purposes of each of the Federal education programs whose funds were consolidated to support it.

A school operating a schoolwide program must identify in its schoolwide plan the programs that have been consolidated and address how it intends to meet the intent and purposes of those programs.

The following examples illustrate how a schoolwide program can meet the intent and purposes of specific Federal education programs. An LEA should make similar determinations for all other programs it combines.

Title IV, Part A, Subpart 1—Safe and Drug-Free Schools and Communities State Grants Program

The intent and purposes of this program are to support programs that prevent violence in and around schools; prevent the illegal use of alcohol, tobacco and drugs; and involve parents and communities in efforts to foster a safe and drug-free learning environment that supports student achievement. A schoolwide program school may demonstrate that it has met these intent and purposes if the school has implemented drug and violence prevention programs and activities that are consistent with the Safe and Drug-Free Schools and Communities Act principles of effectiveness, and are coordinated with other school and community-based services and programs.

Title I, Part D, Subpart 2—Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk

The intent and purposes of this program are to support the operation of LEA programs that involve collaboration with locally operated correctional facilities to (1) carry out high-quality education programs to prepare children and youth for secondary school completion, training, employment, or further education; (2) provide activities to facilitate the transition of such students and youth from the correctional program to further education or employment; and (3) operate programs in local schools for children and youth returning from correctional facilities and programs that may serve at-risk children and youth. A schoolwide program school may demonstrate that it meets the intent and purposes of this program if its comprehensive schoolwide plan addresses the need to improve educational services and opportunities for the achievement of neglected or delinquent children, by, for example, providing transitional programming for students returning from institutionalization to further schooling or by creating other support systems to prevent these students from dropping out of school.

Title III, Part A, Subpart 1—English Language Acquisition and Language Enhancement and Academic Achievement

The intent and purposes of this program are to help ensure that children with limited English proficiency become proficient in English, develop high academic attainment in English, and meet the same challenging State academic content and achievement standards in the core academic subjects that all other children are expected to meet. Another purpose of this program is to increase the capacity of schools to establish, implement and sustain high-quality language instruction programs and English language development programs that assist schools in effectively teaching students with limited English proficiency. Title III, Part A is also designed to promote the participation of parents and communities of limited English

proficient children in English language instruction programs.

A schoolwide program may demonstrate that it meets these intents and purposes if it incorporates strategies that provide high-quality instruction for students with limited English proficiency in English in the core academic subjects that are designed to assist these students in attaining the same high academic content and achievement standards that all children are expected to meet. In addition, to meet the intents and purposes of this program, a schoolwide school must support the participation of the parents of limited English proficient students in English language instruction programs through the parent involvement component of the schoolwide program.

Title II, Part A—Preparing, Training, and Recruiting High Quality Teachers and Principals

The intent and purposes of this program are to increase student academic achievement through strategies such as improving teacher and principal quality; increasing the number of highly qualified teachers, principals, and assistant principals in schools; and holding LEAs and schools accountable for improvements in student academic achievement.

A schoolwide program may demonstrate that it meets the intent and purposes of this program if the school's comprehensive plan contains activities and strategies that promote increased student achievement such as helping teachers and the principal or principals become more highly qualified through high-quality professional development; increasing the number of highly qualified teachers in the school through recruitment initiatives; and implementing initiatives designed to promote the retention of highly qualified teachers, such as teacher mentoring and support or other incentives.

IDEA, Part B

To help facilitate the inclusion of students with disabilities, the 1997 Amendments to the IDEA, under Section 613(a)(2)(D) and 34 CFR 300.234(a), provided new flexibility to LEAs. The Amendments allow an LEA to use a portion of the funds received under Part B of IDEA for any fiscal year to carry out a schoolwide program under the ESEA, so long as students with disabilities included in such schoolwide programs receive special education and related services in accordance with a properly developed Individualized Education Program (IEP), and are afforded all of the rights and services guaranteed to children with disabilities under IDEA.

The intent and purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education designed to meet their individual needs. A schoolwide program may demonstrate that it meets the intent and purpose of this program by ensuring that, except as to certain use of funds requirements, all the requirements of the IDEA are met, and that children with disabilities are included in schoolwide activities.

High-quality professional development required for all staff and designed to result in improved learning outcomes for all children, including children with disabilities, is one example of a schoolwide activity that meets the intent and purposes of the IDEA. For example, a school may combine IDEA, Part B funds with other program funds for professional development activities that support the implementation of a comprehensive student assessment model aligned with student academic content and achievement standards that enables teachers of all core academic subjects to incorporate alternative assessment procedures in the instructional setting in order to diagnose student achievement and monitor student progress on an ongoing basis. Alternate assessment procedures might include individual reading inventories, writing samples, classroom observations, conferences, and self-assessments. Using this kind of professional development as a way of meeting the intent and purposes of the IDEA ensures that all students, regardless of their special needs, will benefit.

Requirements With Which a Schoolwide Program School Must Comply

A school that consolidates funds from other Federal programs in its schoolwide program is not relieved of the requirements relating to—

- *Health and safety.*
- *Civil rights.* These include the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990. In addition, if a schoolwide program school receives Magnet Schools Assistance funds to eliminate, reduce, or prevent minority group isolation, the school must continue to operate under its desegregation plan.
- *Participation and involvement of parents and students.* A schoolwide program school must implement extensive parent involvement requirements under Part A that would likely satisfy most, if not all, parent involvement requirements in other Federal education programs.
- *Private school children, teachers, and other educational personnel.* Applicable requirements concerning the equitable participation of eligible private school children, teachers, and other educational personnel under other Federal education programs must be met even though funds from those programs are consolidated in schoolwide program schools.
- *Maintenance of effort.* For programs covered under the maintenance of effort requirements in section 9521 of the ESEA, those requirements would be met through participation in Part A. Note that the use of IDEA funds in a schoolwide program does not change an LEA's obligation to meet the maintenance of effort requirements in 34 CFR 300.231.
- *Comparability of services.* To be eligible to receive funds under Parts A and C of Title I, an LEA must already meet the comparability requirements in section 1120A(c) of Title I with respect to schoolwide program schools. If an LEA consolidates funds under the Carl D. Perkins State Vocational and Applied Technology Education Program in a secondary schoolwide program, the school must be provided services from State and local funds that, taken as a whole, are at least comparable to the services being provided in other secondary schools or sites within the same LEA that are not being served with Perkins funds.
- *Use of Federal funds to supplement, not supplant non-Federal funds.* A school operating as a schoolwide program must receive at least the same amount of State and local funds that, in the aggregate, it would have received in the absence of the schoolwide program, including funds needed to provide services that are required by law for children with disabilities and children with limited English proficiency. The school, however, does not have to demonstrate that the specific services provided to students with those funds are supplemental to services that would have been provided to them in that school in the absence of the schoolwide program.

Distribution of Funds to State Educational Agencies (SEAs) and LEAs

Cross-Cutting Federal Requirements

There are requirements contained in the General Education Provisions Act and in the Education Department

General Administrative Regulations that apply generally to Department of Education grants, including Title I. To the extent that these requirements affect activities in schools, they would also apply to a schoolwide program school by virtue of its participation in Title I. The consolidation of Department programs in a schoolwide program, however, would not add to these requirements or require that they be applied separately on a program-by-program basis.

Discretionary Grant Funds

In general, a schoolwide program school may consolidate funds it receives from discretionary (competitive) grants as well as from formula grants, except for Reading First as indicated earlier in this notice. If a schoolwide program school consolidates funds from discretionary grant programs, the school must still carry out the activities described in the application under which the funds were awarded. However, a schoolwide program school would not need to account separately for specific expenditures of the consolidated Federal funds.

Although not required, it is preferable that the applicant LEA or school indicate in its application for discretionary funds that some or all of the funds would be used to support a schoolwide program and describe its activities accordingly. Moreover, if authorized by the program statute, the Department or an SEA could include in its selection criteria for a particular program extra points for conducting activities in a schoolwide program school. For example, an SEA could include such points when awarding subgrants under the Even Start Family Literacy program, which requires an SEA to give priority to applicants that target services to families in need of family literacy services residing in areas with high levels of poverty, illiteracy, or other such need-related factors, including projects that would serve a high percentage of children who reside in participating areas under Part A.

The following examples illustrate how schoolwide program schools can consolidate and use discretionary grant funds by carrying out the activities described in the application under which the funds were awarded.

Programs Under the Adult Education and Family Literacy Act, Title II of the Workforce Investment Act of 1998

The intent and purposes of Adult Education and Family Literacy programs are to improve the basic and literacy skills of adults through high-quality research-based programs that will equip those adults to succeed in the next phase of their education and employment as demonstrated by meeting core performance indicators. An LEA receiving Adult Education and Family Literacy Act funds has the flexibility to determine how it will offer services. Some LEAs may decide to offer services at the district level; others may decide to offer services through schools, including them as part of a schoolwide program. A schoolwide school that combines Adult Education and Family Literacy funds must still carry out the activities described in the LEA's Adult Education and Family Literacy Act application under which the funds were awarded, including complying with the performance reporting and accountability requirements established by the State to meet the requirements of section 212 of the Act.

A schoolwide program school could incorporate adult literacy services in a number of ways, *e.g.*, as part of a family literacy program or as part of a parent involvement strategy to help parents work with their children to improve their children's achievement. However adult literacy services are addressed through a schoolwide program, however, the school's comprehensive plan must contain specific goals and objectives for meeting the core performance indicators.

Even Start Family Literacy Programs

If an LEA participates in a partnership that receives an Even Start discretionary subgrant, the approved project may be part of a schoolwide program as long as the LEA and its required partners carry out the activities described in the Even Start application under which the funds were awarded, including serving families with eligible adults and children generally under the age of eight. A schoolwide program school can consolidate and use Even Start discretionary grant funds by offering a four-component family literacy program that is an integral part of the overall instructional program of the school. This family literacy program must integrate high-quality, intensive, instructional programs based on scientifically based reading research (to the extent that research is available) in four areas: Early childhood education, adult literacy (adult basic and secondary-level education and/or instruction for English language learners), parenting education, and interactive parent and child literacy activities. While each eligible family that participates in these family literacy services must be most in need of the services for Even Start purposes, a schoolwide program could extend these services to other needy families as part of a comprehensive parent involvement strategy.

Limitations

This notice does not apply to nonschoolwide program schools that participate in Title I. Those schools must comply with all statutory and regulatory requirements that apply to funds or benefits they receive. This notice also does not relieve an LEA from complying with all requirements that do not affect the operation of a schoolwide program. For example, to the extent an LEA is required under the Stewart B. McKinney Homeless Assistance Act to designate a homeless liaison to ensure, among other things, that homeless children and youth enroll and succeed in school, the LEA would not be relieved of this requirement by virtue of operating one or more schoolwide programs.

Guidance and Technical Assistance

The Secretary intends to issue additional guidance on schoolwide programs in the near future. In addition, staff in the office of Student Achievement and School Accountability Programs, in conjunction with staff in the other affected Federal program offices, are available to assist LEAs and schools operating schoolwide programs to implement the authority contained in this notice. If LEAs or schools have specific questions, they should contact Jacquelyn C. Jackson, Ed.D, Director, Student Achievement and School Accountability Programs, as provided in the section **FOR FURTHER INFORMATION CONTACT.**

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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.*

(Catalog of Federal Domestic Assistance Number 84.010, Improving Programs Operated by Local Educational Agencies)

Dated: June 28, 2004.

Rod Paige,

Secretary of Education.

[FR Doc. 04–15121 Filed 7–1–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–294]

Application to Export Electric Energy; TexMex Energy, LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: TexMex Energy, LLC (TexMex) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 2, 2004.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 4, 2004, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from TexMex to transmit electric energy from the United States to Mexico. TexMex is a wholly-owned subsidiary of Protama, S.A. de C.V. (Protama), a Mexican corporation that specializes in the development of energy projects. TexMex was formed by Protama for the exclusive purpose of purchasing power at wholesale within the United States for export to Mexico. TexMex is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business located in Mexico. TexMex does not own, operate or control any electric power generation, transmission or distribution facilities in the United States, nor is it affiliated with any owner of such facilities within the United States.

TexMex proposes to arrange for the delivery of electric energy to Mexico over the international transmission facilities owned by El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico. The construction of each of the international transmission facilities to be utilized, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the TexMex application to export electric energy to Mexico should be clearly marked with Docket EA–294. Additional copies are to be filed directly with Guillermo Gonzalez G., c/o Protama S.A. de C.V., Tonala 44, Col. Roma, 06700 Mexico D.F., Mexico *and* Doug F. John, John & Hengerer, 1200 12th Street, NW., Suite 600, Washington, DC 20036–3013.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE on whether the proposed action would adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Electricity Regulation," then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on June 25, 2004.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 04–15011 Filed 7–1–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, July 26, 2004, 1 p.m.–6:30 p.m.; and Tuesday, July 27, 2004, 8:30 a.m.–4 p.m.

ADDRESSES: Newberry Hall, 151 Bee Lane, Aiken, SC 29803.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Closure Project Office, Department of Energy Savannah River Operations Office, PO Box A, Aiken, SC, 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agendas:

Monday, July 26, 2004

1 p.m.—Combined Committee Meeting
5:45 p.m.—Executive Committee Meeting
6:30 p.m.—Adjourn

Tuesday, July 27, 2004

8:30 a.m.—Approval of Minutes; Agency Updates; Public Comment Session
9 a.m.—Chair and Facilitator Update
9:35 a.m.—Waste Management Committee Report
10:40 a.m.—Strategic & Legacy Management Committee Report
11:45 a.m.—Public Comment Session
12 noon—Lunch Break
1 p.m.—Administrative Committee Report
1:45 p.m.—Bylaws Amendment Proposal; '05 Membership; Budget Update; Facility Disposition & Site Remediation Committee Report
2:45 p.m.—Nuclear Materials Committee Report
3:45 p.m.—Public Comment Session
4 p.m.—Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, July 26, 2004.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either

before or after the meeting. Individuals who wish to make the oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802, or by calling her at (803) 952–7886.

Issued at Washington, DC on June 29, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–15089 Filed 7–1–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–691–000 and Docket No. EL04–104–000]

Midwest Independent Transmission System Operator, Inc.; Public Utilities With Grandfathered Agreements In the Midwest ISO Region; Notice of Availability of Filing Instructions and Summary Template

June 22, 2004.

1. Pursuant to the Commission's Notice of Availability of Executive Summary and Index Templates, issued June 17, 2004, the Commission staff is hereby issuing instructions to all parties for filing Grandfathered Agreement (GFA) Information pursuant to the Commission's May 26, 2004 Order in the above captioned dockets.[1] The template for filing summary GFA information is available with this notice and on *http://www.ferc.gov* under "What's New."

2. Parties should review the instructions for the template before using it; the template contains macros that preclude use of the Save and Save As functions in Excel. Summary information should be submitted using the Commission's electronic filing system (eFiling link at *http://www.ferc.gov*). Parties filing testimony and exhibits should also use the eFiling system, provided the material is public and meets the maximum file number and file size restrictions.

3. All submissions are due by 5 p.m. eastern time on June 25, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1435 Filed 07–01–04; 8:45 am]

BILLING CODE 6717–01–P

[1] Midwest Independent Transmission System Operator, Inc., *et al.*, 107 FERC ¶61,191 (2004) (May 26 Order).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–344–000]

Tuscarora Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Tuscarora 2005 Expansion Project, Request for Comments on Environmental Issues, and Notice of Site Visit

June 22, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Tuscarora Gas Transmission Company's (Tuscarora) proposed 2005 Expansion Project. Tuscarora proposes to install and operate a new compressor unit at its existing Wadsworth Booster Station in Washoe County, Nevada, and construct and operate a new compressor station near the town of Likely in Modoc County, California.[1] The EA will be used by the Commission in its decision-making process to determine whether the projects are in the public convenience and necessity.

This notice (NOI) is being sent to affected and adjacent landowners; Federal, State and local representatives and agencies; local newspapers and libraries; potentially interested Indian tribes; public interest and environmental groups; and parties to the proceeding. Government representatives and agencies are encouraged to notify their constituents of the proposed projects and encourage them to comment.

Additionally, with this NOI we[2] are asking government agencies and tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. Agencies may choose to participate once they evaluate Tuscarora's proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the directions for filing comments described below.

If you are a landowner receiving this NOI, you may be contacted by a representative of Tuscarora about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the company could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" should have been attached to the project notice Tuscarora is required to provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Tuscarora seeks authority to:

- Construct, install, own, operate and maintain a new 3,600 hp unit at its existing Wadsworth Booster Station at about MP 10.6 along Tuscarora's Wadsworth lateral, near its interconnection with Paiute's mainline, in Washoe County, Nevada; and
- Construct, install, own, operate, and maintain a new 8,000 hp compressor station at about MP 81.6 along Tuscarora's mainline near Likely in Modoc County, California.

The facilities proposed by Tuscarora would add up to 51,753 dekatherms per day (Dth/d) in firm transportation capacity to its system. This additional capacity is contracted to Southwest Gas

[1] Tuscarora's application was filed on May 21, 2004, under section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations. The Commission issued a notice of the application on May 28, 2004.

[2] "We", "us", and "our" refer to the environmental staff of the FERC's Office of Energy Projects (OEP).

Corporation (Paiute's parent company), Sierra Pacific Power Company (a part owner of Tuscarora), and Avista Corporation. Tuscarora would like to have the proposed facilities constructed and in service prior to the winter of 2005–2006.

Tuscarora's Wadsworth Booster Station and Likely Compressor Station are located on privately owned lands. However, an existing access road to Tuscarora's Wadsworth Booster Station crosses lands owned by the U.S. Bureau of Land Management (BLM) and the Pyramid Lake Indian Reservation. The general location of the project facilities is shown in appendix 1.[3]

Land Requirements for Construction

Construction of the proposed facilities would affect a total of about 12 acres. Operation of the facilities would require about 3.8 acres total. About 2.5 acres would be used during construction of Tuscarora's new unit at the Wadsworth Booster Station, of which about 0.5 acre would be required for operation of the facility. Construction of Tuscarora's new Likely Compressor Station would affect about 9.0 acres, of which 3.3 acres would be used during operation of the facility. The land temporarily impacted during construction of these facilities would afterwards be restored to its previous condition and use.

The Scoping Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. To ensure your comments are considered, please carefully follow the instructions in the public participation section of this NOI.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference, Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Tuscarora.

Our independent analysis of environmental issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, affected and adjacent landowners, environmental and public interest groups, interested individuals and Indian tribes, local newspapers and libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Tuscarora. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils:

—Seismic hazards related to the location of facilities in areas of high earthquake potential.

—Potential for liquefaction at the location for Tuscarora's Likely Compressor Station.

- Water Resources and Wetlands:

—One wetland identified within the tract owned by Tuscarora for the Likely Compressor Station.

- Fish, Wildlife, and Vegetation:

—Permanent clearing of vegetation for operation of new aboveground facilities.

—Potential effects on the bald eagle, a federally-listed threatened species.

- Cultural Resources:

—Avoidance of an archaeological site within the tract owned by Tuscarora for the Likely Compressor Station.

—Native American and tribal concerns.

- Land Use, Recreation and Special Interest Areas, and Visual Resources:

—Assessment of land use and visual compatibility of the proposed facilities with Federal and tribal land owners, including the BLM and the Pyramid Lake Indian Reservation.

- Air and Noise Quality:

—Effects on local air quality and noise environment from construction and operation of proposed facilities.

- Alternatives:

—Assessment of the no action alternative, system alternatives, and alternative facility locations.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative facility locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 3;
- Reference Docket No. CP04–344–000; and
- Mail your comments so that they will be received in Washington, DC on or before July 30, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

If you do not want to send comments at this time but still want to remain on our environmental mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Site Visit

We will also be conducting a site visit to the proposed location of Tuscarora's Wadsworth Booster Station and its proposed Likely Compressor Station, beginning on Monday, July 12, 2004.

Anyone interested in participating in the site visit should meet at the parking lot for the Best Western Airport Plaza Hotel, 1981 Terminal Way, Reno, Nevada 89502, at 12 p.m. (noon) on July 12, 2004. Participants must provide their own transportation. For additional

information, please contact the Commission's Office of External Affairs at (202) 502–8004.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*. Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1437 Filed 7–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM03–8–001]

Quarterly Financial Reporting and Revisions to the Annual Reports; Notice Granting Extension of Time

June 22, 2004.

1. The Federal Energy Regulatory Commission published in the **Federal Register** of February 26, 2004, Order No. 646, a Final Rule amending the Commission's financial reporting regulations establishing new quarterly financial reporting for respondents that currently file Annual Reports with the Commission.[1] These new quarterly financial reports are the FERC Form No. 3–Q, Quarterly Financial Report of Electric Companies, Licensees, and Natural Gas Companies, and the FERC Form No. 6–Q, Quarterly Financial Report of Oil Pipeline Companies.

2. On June 10, 2004, the Edison Electric Institute (EEI) and the Interstate Natural Gas Association of America (INGAA) filed a joint motion for an extension of the deadlines for submitting the first two quarterly financial reports required by the Commission in the Final Rule. EEI and INGAA state that the software needed to file the new quarterly financial reports is not expected to be released for general use until June 30, 2004, which will leave filers only nine days from the current July 9, 2004 filing date. Additionally, they state that additional time would be needed for filers to familiarize themselves with the software, prepare electronic copies of the quarterly reports, have the reports internally reviewed, approved and filed.

3. At a minimum EEI and INGAA request an extension of the filing deadline for first quarterly report to August 23, 2004, and an extension of the filing deadline for the second quarterly report to September 23, 2004. They state these dates would space the first FERC reports two weeks away from the U.S. Securities and Exchange Commission's August 9, 2004 deadline, and space the two FERC reports a month apart.

4. Based on the above, filing dates for the first two quarterly financial reports for all respondents are extended as shown in the tables below:

EXTENSION OF FILING DATES FOR MAJOR ELECTRIC AND NATURAL GAS COMPANIES

	Quarterly period	Filing dates for major electric and natural gas respondents in final rule	Filing extension for major electric and natural gas respondents
1	1/1/2004–3/31/2004	July 9, 2004	August 23, 2004.
2	4/1/2004–6/31/2004	September 8, 2004	September 23, 2004.

EXTENSION OF FILING DATES FOR NONMAJOR ELECTRIC, NATURAL GAS AND ALL OIL PIPELINE FILERS

	Quarterly period	Filing dates for nonmajor electric, nonmajor natural gas, and all oil pipeline respondents in final rule	Filing extension for nonmajor electric, natural gas, and all oil pipeline respondents
1	1/1/2004–3/31/2004	July 23, 2004	September 3, 2004.
2	4/1/2004–6/31/2004	September 22, 2004	October 7, 2004.

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

[1] Quarterly Financial Reporting and Revisions to the Annual Reports, Order No. 646, 69 FR 9030 (Feb. 26, 2004), III FERC Stat. & Regs. ¶ 31,158 (Feb. 11, 2004).

Magalie R. Salas,
Secretary.
[FR Doc. E4–1436 Filed 6–28–04; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[SFUND–2004–0008, FRL–7781–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Cooperative Agreements and Superfund State Contracts for Superfund Response Actions, EPA ICR Number 1487.08, OMB Control Number 2050–0179

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 31, 2004.

ADDRESSES: Submit your comments, referencing docket ID number SFUND–2004–0008, to EPA online using EDOCKET (our preferred method), by e-mail to *superfund.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Solid Waste and Emergency Response (OSWER), Superfund docket, mail code 5202T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kirby Biggs, Office of Emergency and Remedial Response, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8506; fax number: 703–308–2358; e-mail address: *Biggs.Kirby@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number SFUND–2004–0008, which is available for public viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are States, Federally-recognized Indian tribes and Tribal Consortia, and political subdivisions which apply to EPA for financial assistance under a Superfund cooperative agreement or a Superfund State Contract.

Title: Cooperative Agreements and Superfund State Contracts for Superfund Response Actions.

Abstract: This ICR authorizes the collection of information under 40 CFR part 35, subpart O, which establishes the administrative requirements for cooperative agreements funded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for State, Federally-recognized Indian tribal governments, and political subdivision response actions. This regulation also codifies the administrative requirements for Superfund State Contracts for non-State lead remedial responses. This regulation includes only those provisions mandated by CERCLA, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management under this regulation. The information is collected from applicants and/or recipients of EPA assistance and is used to make awards, pay recipients, and collect information on how Federal funds are being utilized. EPA requires this information to meet its Federal stewardship responsibilities. Recipient responses are required to obtain a benefit (Federal funds) under 40 CFR part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" and under 40 CFR part 35, "State and Local Assistance." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: In the previously approved ICR, it was estimated that the annual number of respondents was 581, and the average annual reporting and recordkeeping burden for this collection is estimated to be 8.8 hours per response. The estimated total annual burden is approximately 5,115 hours, and here are no capital/startup or operations and maintenance costs associated with this ICR. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed

to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 22, 2004.

Elizabeth Southerland,

Director, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation.

[FR Doc. 04–15104 Filed 7–1–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7781–5, Docket ID No. A–94–34]

Clean Air Act Advisory Committee: Correction to Notice Soliciting Interest in Participating on a Task Force on the Performance of the Title V Operating Permits Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction notice.

SUMMARY: The EPA issued a notice in the **Federal Register** of May 17, 2004 (69 FR 27921), concerning formation of a task force to determine the performance of the title V operating permits program and public meetings to be held by the task force. This document is being issued to correct errors in that notice.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Vogel, Information Transfer and Program Implementation Division, Office of Air Quality Planning and Standards, Mail Code C304–04, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–3153; fax number: (919) 541–5509; and e-mail address: *vogel.ray@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Does This Correction Do?

This notice corrects omissions in the May 17 notice concerning how to submit written comments to the task force on the performance of the title V operating program, which may affect those who planned to submit comments, but did not plan to attend the task force meetings. Specifically, the May 17 notice did not mention the EDOCKET system for submitting comments electronically. As a result, the public was not informed that their comments would be made available to others over the internet. The notice also did not include the correct EDOCKET number. The correct number is OAR–2004–0075. Finally, the notice did not specify when the comment period would be open for this action. The comment period will open starting June 15, 2004, and will close March 1, 2005.

II. How Do I Submit Comments?

A. EDOCKET (Preferred)

The EPA's electronic public docket 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. Please note: EPA's policy is to not edit your comment; therefore, any identifying or contact information provided in the body of a comment will be included in the official public docket. To submit a comment through EDOCKET, go to *http://www.epa.gov/edocket.* Once in the system, select "search," then key in OAR–2004–0075 (the docket identification (ID) number for the title V performance task force).

B. E-Mail

Comments may also be sent by electronic mail (e-mail) to: *A-and-R-docket@epa.gov,* attention Docket ID No. OAR–2004–0075. In contrast to EPA's electronic public docket, EPA's email system is not an "anonymous access" system. The EPA's e-mail system automatically captures your e-mail address and includes it as part of the comment that is placed in the official public docket. Submit an email comment now.

C. Disk, CD–ROM, or Mail

If you submit a disk or CD–ROM, EPA recommends that you include your name, mailing address, 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. If you submit mail, please enclose two copies. Send to: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2004–0075.

D. Hand Delivery or Courier

Deliver comments to: Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. OAR–2004–0075.

Deliveries are accepted only between 8:30 a.m. and 4:30 p.m. eastern standard time (e.s.t.), Monday through Friday, excluding Federal holidays.

E. By Facsimile

Fax your comments to the EPA Docket Center at (202) 566–1741, Attention Docket ID. No. OAR–2004–0075.

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

A. Docket

The EPA has established an official public docket for this action under docket ID number OAR–2004–0075. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include confidential business information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch, Room 119, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

B. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA dockets. You may use EPA dockets at: *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number. The docket number for this action is OAR–2004–0075.

Dated: June 24, 2004.

Jeffrey S. Clark,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 04–15103 Filed 7–1–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6653–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D–COE–E39064–FL Rating LO, Programmatic EIS—Florida Keys Water Quality Improvements Program, To Implement Wastewater and Stormwater Improvements, South Florida Water Management District, Monroe County, FL.

Summary: EPA has no objection to the preferred alternative.

ERP No. D–DOE–K06007–CA Rating EC2, Site-wide Continued Operation of Lawrence Livermore National Laboratory (LLNL) and Stockpile Stewardship and Management, Implementation, Alameda and San Joaquin Counties, CA.

Summary: EPA raised environmental concerns on: (1) The facility's Spill Prevention, Control and Countermeasure capabilities; (2) mitigation to reduce radionuclide emissions and construction-related air quality impacts; (3) environmental contaminants; and (4) accident-related issues. The Final EIS/Programmatic Final SEIS for both DOE projects at the Livermore facility should clarify the relationship between each project's final preferred alternative; disclose impacts of reasonable scenarios that were not addressed; and identify how decision-making for the respective projects is expected to proceed.

ERP No. D–FAA–F51049–IN Rating EC2, Gary/Chicago International Airport Master Plan Development Including Runway Safety Area Enhancement/Extension of Runway 12–30, Funding, Lake County, IN.

Summary: EPA expressed environmental concerns related to potential adverse impacts to clean-up/remediation activities at three EPA CERCLA sites and wetlands.

ERP No. D–FHW–L40222–WA Rating LO, WA–99 Alaskan Way Viaduct and Seawall Replacement Project, To Provide Transportation Facility and Seawall with Improved Earthquake Resistence, US Army COE Section 10 and 404 Permits, Seattle WA.

Summary: EPA expressed no objections to any of the alternatives analyzed in the EIS.

ERP No. D–FTA–K54029–CA Rating EC2, Silicon Valley Rapid Transit Corridor, Construct BART Extension to Milpitas, San Jose and Santa Clara, in the Cities of Fremont, Milpitas, San Jose and Santa Clara, Alameda and Santa Clara Counties, CA.

Summary: EPA expressed concerns regarding impacts on water resources, air quality, environmental justice, and cumulative effects.

ERP No. D–NSF–A99223–00 Rating LO, Project IceCube Comprehensive Environmental Evaluation, Antarctica.

Summary: EPA has no objections to the proposed action.

ERP No. DA–AFS–L61218–ID Rating LO, Frank Church-River of No Return Wilderness (FR–RONRW), Noxious Weed Treatments, Updated Information to Supplement the 1999 Final EIS for FR–RONRW, Implementation, Bitterroot, Boise, Nez Perce, Payette and Salmon-Challis National Forests, ID.

Summary: EPA has no objections to the proposed treatment strategy.

EPA has no objections to the proposed treatment strategy.

ERP No. DA–DOE–A06178–00 Rating EC2, Programmatic EIS—Site-wide Continued Operation of Lawrence Livermore National Laboratory (LLNL) and Supplemental Stockpile Stewardship and Management Plan for use of Proposed Materials at the National Ignition Facility (NIF), Implementation, Alameda and San Joaquin Counties, CA.

Summary: EPA raised environmental concerns on: (1) The facility's Spill Prevention, Control and Countermeasure capabilities; (2) mitigation to reduce radionuclide emissions and construction-related air quality impacts; (3) environmental contaminants; and (4) accident-related issues. The Final EIS/Programmatic Final SEIS for both DOE projects at the Livermore facility should clarify the relationship between each project's final preferred alternative; disclose impacts of reasonable scenarios that were not addressed; and identify how decision-making for the respective projects is expected to proceed.

ERP No. DS–SFW–K64017–CA Rating LO, Trinity River Mainstem Fishery Restoration Program, Updated Information, To Restore and Maintain the Natural Production of Anadromous Fish, Downstream of Lewiston Dam, Hoopa Valley Tribe, Weaverville, Trinity County, CA.

Summary: EPA has no objection to the preferred alternative.

Final EISs

ERP No. F–NIH–J81012–MT, Rocky Mountain Laboratories (RML) Integrated Research Facility, Construction and Operation to Improve the Nation's Ability to Study and Combat Emerging Infectious Disease and to Protect Public Health, Hamilton, Ravalli County, MT.

Summary: EPA expressed concerns regarding the need for full disclosure of potential risks of release of infectious agents, and the operation of the facility using BSL–4 agents in a research facility near a residential area. EPA requested the FEIS include a comprehensive risk notification and communication program for the local community.

ERP No. F–NRS–L31004–ID, Little Wood River Irrigation District, Gravity Pressurized Delivery System Construction, Funding and U.S. Army COE Section 404 Permit, Townships of 1 North, 1 South and 2 South of Range 21 East of the Boise Merridan, City of Carey, Blaine County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–USA–L10005–AK, Programmatic EIS—Army Transformation of the 172nd Infantry Brigade (Separate) to a Stryker Brigade Combat Team (SBCT), Propose Location Forts Wainwright and Richardson, AK.

Summary: EPA continues to express concerns related to soil and water resource impacts. EPA stated that the Army's monitoring and management programs for training areas must be fully implemented to repair the predicted damage.

ERP No. F–USN–K11112–CA, Tertiary Treatment Plant and Associated Facilities Construction and Operation, Implementation, Marine Corps Base Camp Pendleton, San Diego County, CA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: June 29, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–15098 Filed 7–1–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6653–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/* Weekly receipt of Environmental Impact Statements Filed June 21, 2004 Through June 25, 2004 Pursuant to 40 CFR 1506.9.

EIS No. 040297, DRAFT SUPPLEMENT, FTA, NY, Erie Canal Harbor Project (formerly known as the Buffalo Inner Harbor Development Project) Updated Information on the Original Project, City of Buffalo, Erie County, NY, Comment Period Ends: August 9, 2004, Contact: Irwin Kessman (212) 668–2170. The above FTA EIS should have appeared in the 6/25/2004 **Federal Register**. The 45-day Comment Period is Calculated from 6/25/2004.

EIS No. 040298, DRAFT EIS, AFS, OR, 18 Fire Recovery Project, Salvaging Dead Trees, Reforesting 1,936 Acres with Ponderosa Pine Seedling and Closing/Decommissioning Roads, Deschutes National Forest, Bend/Fort Rock Ranger District, Deschutes County, OR, Comment Period Ends: August 16, 2004, Contact: Jim Schlaich (541) 383–4725.

This document is available on the Internet at: *http://www.fs.fed.us/r6/centraloregon/projects/units/bendrock/18fire/.*

EIS No. 040299, DRAFT EIS, AFS, ID, South Bear River Range Allotment Management Plan Revisions, Continued Livestock Grazing on Ten Allotments, Caribou-Targhee National Forest, Montpelier Ranger District, Bear Lake and Franklin Counties, ID, Comment Period Ends: August 16, 2004, Contact: Heich Heyrend (208) 847–0375.

EIS No. 040300, DRAFT EIS, AFS, WY, Bighorn National Forest Revised Land and Resource Management Plan, Implementation, Big Horn Mountain Range, Bighorn National Forest, Johnson, Sheridan, Bighorn and Washakie Counties, WY, Comment Period Ends: September 30, 2004, Contact: Bernie Bornong (307) 674–2685.

This document is available on the Internet at: *http://www.fs.fed.us/r2/bighorn.*

EIS No. 040301, FINAL EIS, AFS, OR, Eyerly Fire Salvage Project, Burned and Damaged Trees Salvage, Reforestation and Fuels Treatment, Implementation, Deschutes National Forest, Sisters Ranger District, Jefferson County, OR , Wait Period Ends: August 2, 2004, Contact: Dave Owens (541) 416–6425.

This document is available on the Internet at: *http//www.fs.fed.us/r6/deschutes.*

Amended Notices

EIS No. 040247, FINAL EIS, SFW, CA, Multiple Habitat Conservation Program for Threatened and Endangered Species Due to the Urban Growth within the Planning Area, Adoption and Incidental Take Permits Issuance, San Diego County, CA, Due: July 6, 2004, Contact: Lee Ann Carranza (760) 431–9440.

Revision of FR Notice Published on 6/4/2004: CEQ Comment Period Ending 6/28/2004 has been Extended to 7/6/2004.

EIS No. 040296, FINAL SUPPLEMENT, NOA, Final Rule to Implement Management Measures for the Reduction of Sea Turtle Bycatch and Bycatch Mortality in the Atlantic Pelagic Longline Fishery, Wait Period Ends: June 29, 2004,

Contact: Christopher Rogers (301) 713–2347. Correction Website Address: *http//www.nmfs.noaa.gov/sfa/hms/hmsdocuments.html#feis.*

Dated: June 29, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–15099 Filed 7–1–04; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Tuesday, June 29, 2004. The business of the Board requires that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 29, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–15162 Filed 6–30–04; 9:02 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04122]

Strategies for the Prevention, Early Detection and Control of Chronic Diseases by State Health Officials; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to support The Association of State and Territorial Health Officials (ASTHO) in the development and sustainment of effective public healthy policies and programs to prevent and control chronic diseases, promote healthy behaviors, and strengthen the outreach and capacity of state health agencies. The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

Assistance will be provided only to ASTHO. ASTHO is the only national non-profit organization that represents all state and territorial public health officials. ASTHO was created specifically to represent this group of state agencies to the federal government and other national organizations and is unique in its role as a liaison among these officials. It has served as a capacity-building organization in public health matters for many years and one of its major objectives is the sharing of information among state health departments. Historically, ASTHO has

played a vital role in assisting state health departments in the development and implementation of programs and policies to promote health and prevent disease.

C. Funding

Approximately $555,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before August 1, 2004, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Jennifer Tucker, 4770 Buford Highway, MS K–40, Atlanta, GA 30304, Telephone: 770–488–6454, E-mail: *jrt5@cdc.gov*.

Dated: June 28, 2004.

Alan Kotch,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–15067 Filed 7–1–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Program Evaluation Monitoring System; Training and Technical Assistance

Announcement Type: Competitive Supplement.

Funding Opportunity Number: PA 04019 Supplement.

Catalog of Federal Domestic Assistance Number: 93.939.

Key Dates:

Application Deadline: August 2, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 317(k)(2) of the Public Health Service Act, 42 U.S.C. 241 and 42 U.S.C. 247b(k)(2).

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of funds for one cooperative agreement for Focus Area 2 under Program Announcement 04019, Capacity Building Assistance (CBA) to strengthen interventions for HIV prevention by the provision of technical assistance and training that improves the capacity of community-based organizations (CBOs) and health departments (HDs) to use a program evaluation monitoring system designed for HIV prevention interventions targeting high-risk racial/ethnic minority individuals of unknown serostatus, including pregnant women, and people of color who are living with HIV/AIDS and their partners. These funds are specifically intended to develop and implement a national integrated program evaluation monitoring system (PEMS) technical assistance and training for CBOs in the evaluation of their HIV prevention interventions targeting high risk seronegatives and HIV-positive racial/ethnic minority individuals.

This program addresses the "Healthy People 2010" focus area of HIV infection, CDC's Government Performance and Results Act Performance Plan, the goals of CDC's HIV Prevention Strategic Plan through 2005 at *http://www.cdc.gov/hiv/partners/psp.htm* and Advancing HIV Prevention: New Strategies for a Changing Epidemic at *http://www.cdc.gov/mmwr/PDF/wk/mm5215.pdf*.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for HIV, STD and TB Prevention:

1. Strengthen the capacity to develop and implement effective HIV prevention interventions.
2. Increase the proportion of HIV infected individuals who know they are infected.
3. Increase the proportion of HIV infected people who are linked to appropriate prevention, care, and treatment services.
4. Decrease the number of persons at high risk for acquiring or transmitting HIV infection.

Priority funding considerations require the applicant to submit an application that includes a plan to enhance the ability of CBOs funded under program announcement 04064 to implement and maintain their PEMS, by delivering training and technical assistance. No other application preference factors will be applied to the review and selection process. The plan must address each of the following performance goals:

- Strengthen the capacity of community based organizations and health departments to develop and implement effective HIV prevention interventions by training them to use a monitoring system that provides feedback data for program improvement and modification.
- Increase the proportion of HIV infected individuals who know they are infected by training community based organizations and health departments to collect client-level data through a monitoring system that allows tracking and referral elements to be gathered.
- Increase the proportion of HIV infected people who are linked to appropriate prevention, care, and treatment services by training community based organizations and health departments to effectively use the tracking and referral capabilities of a national monitoring system.
- Decrease the number of persons at high risk for acquiring or transmitting HIV infection by training community based organizations and health departments to assess data collected by a monitoring system for prevention program improvement.

Applications must ensure quality programming and measurement of progress based on core performance indicators specific to Focus Area 2 through:

1. Measuring the proportion of CDC-funded CBOs receiving program evaluation monitoring system training.
2. Measuring the proportion of CDC-funded health departments receiving program evaluation monitoring system training.
3. Measuring the proportion of CBOs that report agreement with the timeliness in completion of program evaluation monitoring system technical assistance and training.
4. Measuring the proportion of health departments that report agreement with the timeliness in completion of program evaluation monitoring system technical assistance and training.
5. Measuring the proportion of CBO and health department technical assistance and training action plans completed according to scheduled delivery in a timely manner.
6. Measuring the proportion of CBOs that report agreement that program evaluation monitoring system technical assistance or training met their needs.
7. Measuring the proportion of health departments that report agreement that program evaluation monitoring system technical assistance or training met their needs.
8. Measuring the proportion of CDC-funded CBOs, by racial/ethnic minority population served, receiving program evaluation monitoring system needs assessments.

Applicants process objectives and activities considered responsive to Focus Area 2 that must be addressed in the program plan are:

a. Provision of ongoing program evaluation monitoring system technical assistance and training for CBOs in the evaluation of effective HIV prevention interventions for high risk seronegatives and HIV-positive racial/ethnic minority individuals using the PEMS software.

b. Provision of program evaluation monitoring system technical assistance and training that measures the diffusion of effective behavioral interventions, including training, cultural adaptation of curricula, and promotion of "boxed" interventions from CDC.

c. Provision of program evaluation monitoring system technical assistance and training that measures the expected outcomes of regional consultant pool capacity building assistance activities.

d. Provision of program evaluation monitoring system technical assistance and training for CBOs and health departments to help them deliver effective and efficient prevention interventions.

These activities must be conducted in collaboration with the CDC, Division of HIV/AIDS Prevention. These activities may benefit from collaboration with Deloitte and ORC/MACRO, and other contractors working to ensure that CBOs have the skills and access to technical assistance necessary to implement and maintain PEMS.

Activities: Specific activities that must be conducted by applicants are as follows:

A. Use of logic modeling for program planning and conducting program evaluation monitoring system technical assistance and training.

B. Inclusion of input from CBOs and health departments about the proposed program evaluation monitoring system technical assistance and training, including people living with HIV/AIDS.

C. Incorporation of cultural competency and linguistic and educational appropriateness into all program evaluation monitoring system technical assistance and training.

D. Collaboration with CDC, CDC-funded CBA and Technical Assistance (TA) providers, and contractors to plan and deliver program evaluation monitoring system technical assistance and training that is (1) consistent with CDC expectations (as provided in other trainings for grantees); and (2) to avoid duplication of services (as provided by other contractors).

E. Undertake a systems approach in the delivery of a nationally structured program evaluation monitoring system technical assistance and training.

F. Implement a plan for developing and maintaining ongoing relationships with CBOs and health departments.

G. Develop protocols that respond to reactive requests for program evaluation monitoring system technical assistance and training following procedures provided by CDC.

H. Refer all other capacity building assistance requests, which fall outside of program evaluation monitoring system technical assistance and training to the CDC capacity building assistance coordinator for appropriate assignment.

I. Participate in a CDC-coordinated capacity building assistance network to enhance communication, coordination, cooperation, and training.

J. Identify the internal training needs of program evaluation monitoring system technical assistance and training program and staff.

K. Implement a quality assurance strategy that ensures the delivery of high quality program evaluation monitoring system technical assistance and training services.

L. Develop a strategy for marketing program evaluation monitoring system technical assistance and training services.

M. Report planned program evaluation monitoring system technical assistance and training events to the Capacity Building Branch (CBB) Training Calendar for dissemination to CBOs and health departments to be provided by CDC.

N. Facilitate the dissemination of information about program evaluation monitoring system through peer-to-peer interactions, meetings, workshops, conferences, and communications with CDC project officers.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

A. Providing consultation and technical assistance in designing, planning, developing, operating, and evaluating activities (such as progress reporting, submitting information for the training calendar) based on CDC's standards and expectations. CDC may provide consultation and technical assistance both directly from CDC and indirectly through prevention partners, such as health departments, national and regional minority partners, CBA partners, trainers, contractors, and other national organizations.

B. Monitoring the performance of program and fiscal activities through progress reports, data reporting, site visits, conference calls, and compliance with federally mandated requirements, such as protection of client privacy.

C. Assisting in the development of collaborative efforts with state and local health departments, HIV prevention community planning groups, CBOs that receive direct funding from CDC, and other federally supported organizations providing HIV/AIDS services.

D. Conducting an overall evaluation of the program.

II. Award Information

Type of Award: Competitive Supplement to existing Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $1,000,000.

Approximate Number of Awards: 1.

Approximate Award: $1,000,000 (This amount is for the first budget period, and pending availability of funds, each of the subsequent four periods until project end.).

Floor of Award Range: None.

Ceiling of Award Range: $1,000,000.

Anticipated Award Date: July 15, 2004.

Budget Period Length: Budget periods will coincide with budget periods for PA04019 funding. The current budget period ends March 31, 2005. All subsequent budget periods will be 12 months in length.

Project Period Length: Four years, eight months.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Eligibility is restricted to funded organizations under Program Announcement 04019 who currently have received awards serving African American, Latino/Hispanic, Asian and Pacific Islander, or American Indian/Alaska Native HIV prevention providers and stakeholders in Focus Area 2, Strengthening HIV Prevention Interventions.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the total funding amount, your application will not be eligible for review. You will be notified that you did not meet the submission requirements.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Forms are available on the CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms online, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must include a project narrative with your application forms. Your narrative must be submitted in the following format:

- Maximum number of pages: 12 pages (excluding budget, appendices and attachments). If your narrative exceeds the page limit, only the first 12 pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced.
- Single spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One-inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

A. Abstract

Provide a one-page abstract summarizing your proposed activities for the next 8 months (August through March). Include a description of your overall strategy or approach to accomplish the goals and activities of this supplemental announcement.

B. Proposed Plan

1. Describe your specific plan for accomplishing the goals and activities of this supplemental announcement. Include objectives for all the activities listed under the "Purpose" section. List specific, time-phased, realistic and measurable objectives.

2. Describe program activities designed to meet proposed objectives, indicate the approximate dates by which activities will be accomplished, and identify program staff responsible for conducting activities. You must provide activities for all of your proposed objectives.

3. List and describe the evaluation experts or doctoral students and CDC and other agency staff whom you intend to partner with to conduct the activities identified in this supplemental announcement.

4. Describe relationships proposed for these (listed in #3.) and any additional collaboration with CBAs or consultants proposed.

C. Plan of Evaluation

Outline your plan for evaluation (including timeline) and summarize how this strategy will be quality assured and evaluated. Identify process and outcome objectives and describe the methods that will be used to determine whether these objectives have been met.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

Include the following: (1) Memoranda of intent, agreement, or letters of support from collaborators, and (2) letters of support from community-based HIV prevention projects or other CBA providers as appropriate.

IV.3. Submission Dates and Times

Application Deadline Date: August 2, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This program announcement is the definitive guide on application format, content, and deadlines. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Funding restrictions, which must be taken into account while writing your budget are as follows:

- Submit an original and two copies of the Standard Form 424A and a detailed budget that includes line item details, itemization of unit cost breakdowns, and justifications. Please utilize the enclosed Budget guidelines for direction. Break all budget line items down to the level of detail proscribed in the guidelines.
- If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management-PA# 04019 Supplement, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

(1) The extent to which the applicant's overall strategy and specific plan is likely to accomplish the goals and activities of this supplemental announcement. (30 points).

(2) The extent to which the proposed objectives are specific, measurable, realistic, time-phased and consistent with the goals and activities of this supplemental announcement (25 points).

(3) The extent to which the applicant's proposed plan expands or enhances the existing Focus Area 2 activities funded under program announcement 04019 (15 points).

(4) The extent to which the applicant describes and documents support and intended collaboration from evaluation experts and other evaluation contractors as appropriate (15 points).

(5) The extent to which the evaluation plan will measure the achievement of program objectives and monitor the implementation of proposed activities (15 points).

(6) Budget (not scored). The extent to which the budget is reasonable, itemized, clearly justified, and consistent with the intended use of funds.

V.2. Review and Selection Process

An objective review panel will evaluate your application according to the criteria listed above. A technical review of each application, listing strengths, weaknesses, and recommendations, will be conducted by a content expert from the Program Evaluation and Research Branch, Division of HIV/AIDS Prevention. This technical review will be provided to objective panel reviewers as an optional technical source of information to be considered during the scoring phase of the objective review process. The highest ranked application from the objective review process will be recommended to the Capacity Building Branch, Division of HIV/AIDS Prevention for supplemental award.

VI. Award Administration Information

VI.1. Award Notices

If your application is to be funded, you will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 or Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–7 Executive Order 12372
- AR–8 Public Health System Reporting Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status
- AR–16 Security Clearance Requirement

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

The reporting requirements will be on a trimester schedule (every 4 months). Awardee will be required to submit an original, plus two copies of three reports during the budget year as follows:

1. Initial progress report (within or on 30 days after the completion of the first 4 months of the budget period).
2. Interim progress report (within or on 30 days after the completion of the 8 month of the budget period), this report will also serve as the continuation application for determining satisfactory progress for the current year and funding for the next budget year, and must contain the following elements: (a) Current Budget Period Activities Objectives; (b) Current Budget Period Financial Progress; (c) New Budget Period Program Proposed Activity Objectives; (d) Detailed Line-Item Budget and Justification; and (e) Additional Requested Information.
3. Final progress report (within or on 30 days after the completion of the 12 month of the budget period).
4. Financial status report, no more than 90 days after the end of the budget period.
5. Final financial and performance reports, no more than 90 days after the end of the project period.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Keith Yamaguchi, Project Officer, Capacity Building Branch, Division of HIV/AIDS Prevention, CDC National Center for HIV, STD and TB Prevention, 1600 Clifton Road, MS E–40, Atlanta, GA 30333, Telephone: (404) 639–3858, e-mail: *kxy1@cdc.gov.*

For budget assistance, contact: Betty Vannoy, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2897, e-mail: *bbv9@cdc.gov.*

Dated: June 28, 2004.

Alan A. Kotch,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–15062 Filed 7–1–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Provision of Routine HIV Testing, Counseling, Basic Care and Antiretroviral Therapy at Teaching Hospitals in the Republic of Uganda

Announcement Type: New.
Funding Opportunity Number: 04227.
Catalog of Federal Domestic Assistance Number: 93.941.

DATES: Application Deadline: August 2, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301 and 307 of the Public Health Service Act, [42 U.S.C. 241 and 242l], as amended, and section 104 of the Foreign Assistance Act of 1961, [22 U.S.C. 2151b].

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program for Provision of Routine HIV Testing, Counseling, Basic Care and Antiretroviral Therapy (ART) in Teaching Hospitals in the Republic of Uganda.

The overall aim of this program is to develop national models of routine HIV testing in clinical settings, which also provide for the full continuum of post-test counseling and care, including ART.

The United States Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia and the Americas. The President's Emergency Plan for AIDS Relief (PEPFAR) encompasses HIV/AIDS activities in more than 75 countries, and focuses on 14 countries, including Uganda, to deyelop comprehensive and integrated prevention, care, and treatment programs. CDC has initiated its Global AIDS Program (GAP) to strengthen capacity and expand activities in the areas of: (1) HIV primary prevention; (2) HIV care, support and treatment; and (3) capacity and infrastructure development, including surveillance. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential impact is greatest and where the United States government agencies are already active. Uganda is one of those countries.

CDC's mission in Uganda is to work with Ugandan and international partners to develop, evaluate, and support effective implementation of interventions to prevent HIV and related illnesses, and improve care and support of persons with HIV/AIDS.

Mulago and Mbarara Hospitals are Uganda's only university teaching hospitals. The majority of the nation's doctors and nurses are trained within their facilities. The next tier of clinical provision is the regional referral hospitals, which also have an in-service training and supervisory function for the clinicians within their region. Voluntary counseling and testing (VCT) services are only available at 11 percent of health facilities (Uganda Health Facilities Survey 2002), and currently there is no routine counseling and testing (RCT) within hospitals. Where testing services are available in a hospital setting, only selected patients (about 28 percent, according to a recent study) are referred for testing, and pre- and post-test counseling support is generally poor or absent. In the same study, 55 percent of those not tested said they would have wanted to be tested. The most recent Demographic and Health Survey in Uganda indicated that 70 percent of people living in Uganda would like to receive HIV testing, but only ten percent reported that they had ever been tested. An estimated 20–70 percent of patients in hospital wards, TB clinics, and sexually transmitted infection (STI) clinics are HIV infected, but HIV testing is not currently part of routine care. Improved basic preventative care, as well as ART, is about to become more widely available in Uganda as a result of various activities, including this one. ART will be launched within the public hospital system at those facilities where staffing, laboratory service, and the potential for training are maximal.

The purpose of this program are: to provide assistance to Uganda's two university teaching hospitals, Mulago and Mbarara Hospitals; to establish and manage routine counseling and testing services for all patients; to provide comprehensive clinical care for persons with HIV, including staff; to incorporate cotrimoxazole prophylaxis, other basic care interventions, and ART; and to deliver training to clinicians and other staff in these activities.

In addition, the provision at their homes of HIV counseling and testing to the household members of persons receiving ART, and subsequent inclusion in the HIV care program as appropriate, would be encouraged.

The measurable outcomes of the program will be in alignment with goals of the GAP to reduce HIV transmission and improve care of persons living with HIV. They also will contribute to the goals of the PEPFAR, which are: Within five years treat more than two million HIV-infected persons with effective combination ART; care for seven million HIV-infected and affected persons, including those orphaned by HIV/AIDS; and prevent ten million new infections. Some of the specific measurable outputs from this program will be: The number of clients receiving counseling and testing; the percentage of hospital patients receiving counseling and testing; the number of clients receiving basic care packages; the number of new clients served with ART, and those current ART clients receiving continuous service for more than 12 months; and the number of persons trained to provide all the forgoing services.

Activities

Awardee activities for this program are as follows:

a. Establish or expand a project office(s), as required by the activities.

b. Identify project staffing needs; hire and train staff.

c. Identify furnishings, fittings, equipment, computers, and other fixed assets procurement needs of the project and implementing partners, and acquire from normal sources.

d. Establish suitable administrative and financial management structures.

e. Work with Ministry of Health and other stakeholders to develop RCT and care operational guidelines.

f. Support the teaching hospitals to implement RCT in all hospital units, including the outpatient departments.

g. Train hospital staff, residents, and students in provision of HIV/AIDS basic preventive care package and ART management, with the expectation of having at least 1,000 patients receiving regular ART by March 2005.

h. Support the partner hospitals to implement a basic preventive care and ART program for patients and staff.

i. In collaboration with the Ministry of Health train appropriate personnel in conducting the ART accreditation process for potential ART centers.

j. Support the hospitals to develop a simple data collection system, integrated with the general Health Management Information System (HMIS), but collecting specific information related to this program that is not routinely collected by the HMIS.

k. Ensure that the commodities supply and management system is operational with respect to test kits, cotrimoxazole, anti-retrovirals (ARVs), TB diagnostic materials and drugs, and other necessary commodities. Use existing hospital and public sector

systems as far as possible and project emergency re-supply only as necessary.

l. Develop a simple quality assurance system for RCT in clinical settings.

m. Publish reports, guidelines and training manuals relating to RCT testing in clinical settings.

n. Ensure that the above activities are undertaken in a manner consistent with the national HIV/AIDS strategy, and ARV policy and implementation guidelines.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Provide technical assistance, as needed, in the development of training curricula, materials, and diagnostic therapeutic guidelines.

b. Collaborate with the recipient, as needed, in the development of an information technology system for medical record keeping, information access, and in the analysis of data derived from those records.

c. Assist, as needed, in monitoring and evaluation of the program, and in development of further appropriate initiatives.

d. Assist, as needed, in appropriate analysis and interpretation of data collected during training sessions.

e. Provide input, as needed, into the criteria for selection of staff and training candidates, and the regional hospital to be included in the RCT program.

f. Provide input into the overall program strategy.

g. Collaborate, as needed, with the recipient in the selection of key personnel to be involved in the activities to be performed under this agreement, including approval of the overall manager of the program.

Technical assistance and training may be provided directly by CDC staff, or through organizations that have successfully competed for funding under a separate CDC contract.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $9,170,000.

(This amount is the approximate total funding amount for the entire five-year project period.)

Approximate Number of Awards: One.

Approximate Average Award: $1,834,000.

(This amount is for the first 12-month budget period, and includes direct costs.)

Floor of Award Range: None.

Ceiling of Award Range: $1,834,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

Eligible Applicants

Applications may be submitted by public nonprofit organizations, private nonprofit organizations, universities, colleges, research institutions, hospitals, and faith-based organizations that meet the following criteria:

1. Have at least two years of documented HIV/AIDS related clinical training experience in Uganda.

2. Have existing activities with Mulago Hospital because it is critical that this activity commences quickly and that the applicant is not delayed by procedures required to obtain acceptance from the Mulago Hospital authorities.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form CDC 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. Your narrative must be submitted in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Must be submitted in English.

Your narrative should address activities to be conducted over the entire project period, and should consist of, as a minimum, a plan; objectives; activities; methods; an evaluation framework; a budget highlighting any supplies mentioned in the Program Requirements, and any proposed capital expenditure.

The budget justification will not be counted in the page limit stated above. Guidance for completing your budget can be found on the United States government Web site at the following address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

Additional information is optional and may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information could include but is not limited to: organizational charts, curriculum vitae, letters of support, etc.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business

entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*. If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2 Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: August 2, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications:

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Funds may be used for:

1. RCT at the facilities targeted by the project including required training, test kit purchase, and staffing.

2. Covering the costs of and procuring elements of the basic preventive care package, including but not necessarily limited to daily cotrimoxazole prophylaxis, TB screening, diagnosis and treatment, as well as possible INH prophylaxis, prevention with positives education, household water treatment and bednets.

3. ART at the facilities targeted by the project, including required ARV purchase, training, additional staffing, laboratory rehabilitation and equipment, and office and information technology equipment to facilitate enhancement of the hospitals' data management systems to include ART and necessary program indicators.

4. Evaluation and management of the activities.

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may not be used for any new construction.
- Antiretroviral Drugs—The purchase of ARVs, reagents, and laboratory equipment for antiretroviral treatment projects require pre-approval from HHS/CDC officials.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, training, travel, supplies and services. Equipment may be purchased and renovations completed if deemed necessary to accomplish program objectives; however, prior approval by CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, indirect costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organization regardless of their location.
- The applicant may contract with other organizations under this program, however, the applicant must perform a substantial portion of the activities, including program management and operations, and delivery of prevention and care services for which funds are requested.
- You must obtain an annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document ("recipient") cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any foreign recipient must have a policy explicitly opposing, in its activities outside the United

States, prostitution and sex trafficking, except that this requirement shall not apply to the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative or to any United Nations agency, if such entity is a recipient of U.S. Government funds in connection with this document.

The following definitions apply for purposes of this clause:

• Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

• A foreign recipient includes an entity that is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico. Restoration of the Mexico City Policy, 66 FR 17303 (March 28, 2001).

All recipients must insert provisions implementing the applicable parts of this section, 'Prostitution and Related Activities,' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, acknowledge that each certification to compliance with this section, "Prostitution and Related Activities," are a prerequisite to receipt of U.S. Government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. In addition, all recipients must ensure, through contract, certification, audit, and/or any other necessary means, all the applicable requirements in this section, "Prostitution and Related Activities," are met by any other entities receiving U.S. Government funds from the recipient in connection with this document, including without limitation, the recipients' sub-grantees, sub-contractors, parents, subsidiaries, and affiliates. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, "Prostitution and Related Activities."

All primary grantees receiving U.S. Government funds in connection with this document must certify compliance prior to actual receipt of such funds in a written statement referencing this document (*e.g.*, "[Recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.'") addressed to the agency's grants officer. Such certifications are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, "Prostitution and Related Activities," is an express term and condition of receiving U.S. government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event it is determined by HHS that the recipient has not complied with this section, "Prostitution and Related Activities."

Awards will not allow reimbursement of pre-award costs. Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management Section—PA# 04227, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Understanding the issues, principles and systems requirements involved in delivering RCT, basic preventive care, and ART in a clinical context in Uganda (25 points)

Does the applicant demonstrate an understanding of the clinical, social, managerial, ethical and other practical issues involved in delivering RCT, basic preventive care, and ART effectively in the setting of Mulago and Mbarara hospitals?

2. Ability to carry out the proposal (25 points)

Does the applicant demonstrate the capability to achieve the purpose of this proposal?

3. Work Plan (20 points)

Does the applicant describe activities which are realistic, achievable, time-framed and appropriate to complete this program?

4. Personnel (15 points)

Are the personnel, based on qualifications, training, availability, and experience, adequate to carry out the proposed activities?

5. Administrative and Accounting Plan (15 points)

Is there a plan to account for, prepare reports on, monitor, and audit expenditures under this agreement; manage the resources of the program; and produce, collect, and analyze performance data?

6. Budget (not scored)

Is the budget itemized and well justified for conducting the activities; and is it consistent with stated activities and planned program activities?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by the National Center for HIV, STD, and TB Prevention (NCHSTP)/GAP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above.

V.3. Anticipated Announcement and Award Dates

September 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.* The following additional requirements apply to this project:

• AR–10 Smoke-Free Workplace Requirements Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies, of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Detailed Line-Item Budget and Justification.
   e. Additional Requested Information.
   f. Measures of Effectiveness.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.
4. Semi annual progress reports, 30 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Jonathan Mermin, MD, MPH, Global Aids Program [GAP], Uganda Country Team, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention [CDC], PO Box 49, Entebbe, Uganda, Telephone: +256–41320776, E-mail: *jhm@cdc.gov.*

For financial, grants management, or budget assistance, contact: Shirley Wynn, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–1515, E-mail address: *zbx6@cdc.gov.*

Dated: June 28, 2004.

Alan Kotch,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–15065 Filed 7–1–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

HIV/AIDS Surveillance: Development and Evaluation of Education Materials and Tools Used To Ascertain Risk Factor Information for HIV/AIDS Surveillance

Announcement Type: Supplement.

Funding Opportunity Number: 04017 Supplement.

Catalog of Federal Domestic Assistance Number: 93.944.

Application Deadline: August 2, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under the Public Health Service Act Sections 301 (42 U.S.C. 241); and 318B (42 U.S.C. 247c–2), as amended.

Purpose: The purpose of the supplement is to develop and evaluate educational materials and tools to assist in ascertaining risk factor information by HIV/AIDS surveillance programs funded by the HIV Incidence and Case Surveillance Branch in the Division of HIV/AIDS Prevention at the Centers for Disease Control and Prevention. The ultimate goal is for surveillance areas to better ascertain risk factor information in an effort to reduce the proportion of HIV/AIDS cases reported to the national surveillance system without transmission category information.

The decreasing proportion of transmission category information at the national level continues to be a problem. Transmission category information is critical to allocating resources and developing effective prevention activities. Funded areas will develop educational materials and tools to assist surveillance staff, health care partners and providers, and others reporting or abstracting risk factor information for surveillance purposes to obtain more complete ascertainment of risk factor information at the local level. There is also a need to evaluate these materials and tools to determine whether they are useful in improving completeness of ascertainment of risk factor information and if so, what information sources produced the highest yields. This information will help to inform the HIV/AIDS Surveillance Guidelines revisions. The development and evaluation of materials and tools is intended to take place over a two year period. The evaluation results are intended to immediately inform the HIV/AIDS surveillance program in order to make timely programmatic decisions. Year one funding is intended for formative assessment of barriers to reporting. Year two is intended for materials and tools development and testing of materials and tools. This program addresses the "Healthy People 2010" focus area(s) for HIV.

Status of the ongoing award: PA 04017, HIV/AIDS Surveillance Cooperative Agreement, is in the 1st year of a 3-year project period.

Federal and/or non-Federal investment in that award: In FY 2004, $45,434,343 was awarded to 65 state, territorial, and local health departments.

The impact on the objectives of the affected program of not making the additional or supplemental award: A principal goal of the HIV/AIDS Cooperative agreement is to better ascertain risk factor information in an effort to reduce the proportion of HIV/AIDS cases reported to the national surveillance system without transmission category information. Without this supplement, we will be unable to develop and evaluate educational materials and tools to assist in ascertaining risk factor information by HIV/AIDS surveillance programs. The development and evaluation of materials and tools is intended to take place over a two year period. The evaluation results are intended to immediately inform the HIV/AIDS surveillance program in order to make timely programmatic decisions. Year one funding is intended for formative assessment of barriers to reporting. During year two, the educational materials and tools will be developed and tested.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for HIV STD and TB Prevention (NCHSTP): Strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs.

Activities

Awardee activities for this program are as follows:

(1) Participate in a conference call (within one month of award) with CDC and other awardees to begin to develop a project plan and 2-year time line;

(2) Collaborate with CDC staff to develop instruments to assess barriers to reporting and collect information on barriers to reporting;

(3) Collaborate with CDC staff to select control and evaluation sites within each area;

(4) From evaluation sites, collect risk factor information using standard public health surveillance methods such as chart reviews, source of information as well as other relevant information utilizing the educational materials and tools in a timeframe determined by the CDC;

(5) Report information collected in item (4) in a format and timeframe determined by the CDC;

(6) Provide qualitative feedback related to the feasibility and acceptability of the educational materials and tools to the CDC in a format and timeframe determined by the CDC; and

(7) Maintain a secure environment to protect the security and confidentiality of data obtained in these evaluation activities.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. CDC activities include:

(1) Participate in a conference call (within one month of award) with awardees to begin to develop a project plan and 2-year time line;

(2) Collaborate with awardees to develop instruments to assess barriers to reporting;

(3) Collaborate with awardees to select control and evaluation sites within each area;

(4) Determine timeframe for the collection and reporting of data by the awardees to the CDC;

(5) Maintain a secure environment to protect the security and confidentiality of data obtained in these evaluation activities; and

(6) Analyze data and disseminate project results.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $240,000.

Approximate Number of Awards: 2–3.

Approximate Average Award: $80,000.

Anticipated Award Date: September 2004.

Budget Period Length: Budget periods will coincide with budget periods for PA04017 funding. The current budget period ends December 31, 2004.

Project Period Length: 2 years 3 months.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Surveillance areas should have a large number of cases reported without risk factor information available over a short time period in order to provide sufficient statistical power.

Eligible applicants are state or territorial health departments or directly funded city health departments currently engaged in HIV/AIDS surveillance funded through Program Announcement 04017 with at least 5,000 HIV cases reported to CDC in 2002 as reported in the HIV/AIDS Surveillance Report (2002) and with at least 800 cases initially reported without risk factor information.

Eligible applicants also must have the legal authority to access health care records, consistently and rapidly contact health care providers as part of routine HIV surveillance, and have implemented HIV laboratory- and provider-based reporting since at least January 1, 2001.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form CDC 1246. Application forms and instructions are available on the CDC web site, at the following Internet address: *www.cdc.gov* listed under funding. If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 10

If your narrative exceeds the page limit, only the pages within the page limit will be reviewed.

- Font size: 12 point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

(1) Participate in a conference call (within one month of award) with CDC and other awardees to begin to develop a project plan and 2-year time line;

(2) Collaborate with CDC staff to develop instruments to assess barriers to reporting and collect information on barriers to reporting;

(3) Collaborate with CDC staff to select control and evaluation sites within each area;

(4) From evaluation sites, collect risk factor information using standard public health surveillance methods such as chart reviews, source of information as well as other relevant information utilizing the educational materials and tools in a timeframe determined by the CDC;

(5) Report information collected in item (4) in a format and timeframe determined by the CDC;

(6) Provide qualitative feedback related to the feasibility and acceptability of the educational materials and tools to the CDC in a format and timeframe determined by the CDC; and

(7) Maintain a secure environment to protect the security and confidentiality of data obtained in these evaluation activities.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access www.dunandbradstreet.com or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*. If your

application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: August 2, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions which must be taken into account while writing your budget are as follows:

- None

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—PA #04017 Supplemental, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

(1) The extent to which the applicant describes its ability to collaborate with CDC and other awardees on projects with a quick turn around time. (20 Points)

(2) The extent to which the applicant demonstrates its ability to develop realistic project plans and time lines and follow through on their completion. (20 Points)

(3) The extent to which the applicant describes its ability to develop instruments to assess barriers to reporting, or other surveillance activities, and to collect information on barriers to these activities. (20 Points)

(4) The extent to which the applicant describes past, current, and proposed collaboration with: the relevant HIV/AIDS organizations and agencies within the reporting area, CDC, and other states or national organizations involved in coordinating and assuring the quality, completeness, and accuracy of HIV/AIDS surveillance data and can demonstrate the understanding of the importance of following a standard protocol for data collection. (15 Points)

(5) The extent to which the applicant can maintain a secure environment to protect the security and confidentiality of data obtained in these evaluation activities. (15 Points)

(6) The extent to which proposed staffing, organizational structure, staff experience and background, and job descriptions and curricula vitae for both proposed and current staff indicate the ability to carry out the anticipated activities. (10 Points)

(7) The budget is reasonable, clearly justified, consistent with the demonstrated need and proposed activities, and likely to lead to success of the planned activities. (Reviewed, but not scored)

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office staff, and for responsiveness by NCHSTP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the evaluation criteria listed in the criteria section above.

V.3. Anticipated Announcement and Award Dates

September 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions.
- AR–7 Executive Order 12372.
- AR–8 Public Health System Reporting Requirements.
- AR–9 Paperwork Reduction Act Requirements.
- AR–11 Healthy People 2010.
- AR–14 Accounting System Requirements.
- AR–16 Security Clearance Requirement.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Ron Sanders, Program Consultant, National Center for HIV, STD and TB Prevention, Division of HIV AIDS Prevention, 1600 Clifton Road, NE Mail stop E–47, Atlanta, GA 30333, Telephone: 404–639–4678, E-mail: *RLS5@cdc.gov.*

For financial, grants management, or budget assistance, contact: Kang Lee, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2733, E-mail: *kil8@cdc.gov.*

Dated: June 28, 2004.

Alan Kotch,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–15070 Filed 7–1–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 05003]

Tuberculosis Elimination and Laboratory; Notice of Availability of Funds—Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for Tuberculosis Elimination and Laboratory was published in the **Federal Register** on May 27, 2004, Volume 69, Number 103, pages 30300–30312. The notice is amended as follows: On page 30300, Column 1, "Application Deadline", change deadline date to July 29, 2004. On page 30308, Column 3, "Application Deadline", change deadline date to July 29, 2004.

Dated: June 28, 2004.

Alan Kotch,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–15066 Filed 7–1–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Nonvoting Members Representing Industry Interests on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for nonvoting industry representatives to serve on certain device panels of the Medical Devices Advisory Committee in the Center for Devices and Radiological Health.

FDA has a special interest in ensuring that women, minority groups, individuals with physical disabilities, and small businesses are adequately represented on its advisory committees. Therefore, the agency encourages nominations for appropriately qualified candidates from these groups.

DATES: Industry organizations interested in participating in the selection of a nonvoting member to represent industry for vacancies listed in this notice must send a letter to FDA by August 2, 2004, stating their interest in one or more panels. Concurrently, nomination materials for prospective candidates should be sent to FDA by August 2, 2004. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative.

ADDRESSES: All letters of interest and nominations should be sent to Kathleen L. Walker, Center for Devices and Radiological Health (HFZ–17), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1283, ext. 114, e-mail: *KLW@CDRH.FDA.GOV.*

FOR FURTHER INFORMATION CONTACT: Kathleen L. Walker, Center for Devices and Radiological Health (HFZ–17), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1283, ext. 114, e-mail: *KLW@CDRH.FDA.GOV.*

SUPPLEMENTARY INFORMATION: Section 520(f)(3) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360j(f)(3)), as amended by the Medical Device Amendments of 1976, provides that each medical device panel include one nonvoting member to represent the interests of the medical device manufacturing industry.

FDA is requesting nominations for nonvoting members representing industry interests for the vacancies listed below:

Medical Device Panels of the Medical Device Advisory Committee	Approximate Date Representative is Needed
Circulatory System Devices Panel	July 1, 2005
Ear, Nose, and Throat Devices Panel	Nov. 1, 2004
Immunology Devices Panel	Mar. 1, 2005
Medical Devices Dispute Resolution Panel	Oct. 1, 2004
Neurological Devices Panel	Dec. 1, 2004
Obstetrics and Gynecology Devices Panel	Feb 1, 2005
Orthopaedic and Rehabilitation Devices Panel	Sept. 1, 2004

I. Functions

The functions of the medical device panels are listed as follows: (1) Review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation; (2) advise the Commissioner of Food

and Drugs regarding recommended classification or reclassification of these devices into one of three regulatory categories; (3) advise on any possible risks to health associated with the use of devices; (4) advise on formulation of product development protocols; (5) review premarket approval applications for medical devices; (6) review guidelines and guidance documents; (7) recommend exemption to certain devices from the application of portions of the Act; (8) advise on the necessity to ban a device; (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices; and (10) make recommendations on the quality in the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

II. Selection Procedure

Any organization in the medical device manufacturing industry wishing to participate in the selection of a nonvoting member to represent industry on a particular panel should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this notice. Persons who nominate themselves as industry representatives for the panels will not participate in the selection process. It is, therefore, recommended that nominations be made by someone within an organization, trade association, or firm who is willing to participate in the selection process. Within the subsequent 30 days, FDA will send a letter to each organization and a list of all nominees along with their resumes. The letter will state that the interested organizations are responsible for conferring with one another to select a candidate, within 60 days after receiving the letter, to serve as the nonvoting member representing on a particular device panel. If no individual is selected within the 60 days, the Commissioner may select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may nominate themselves or an organization representing the medical device industry may nominate one or more individuals to serve as nonvoting industry representatives. A current curriculum vitae (which includes the nominee's business address, telephone number, and e-mail address) and the name of the panel of interest should be sent to the FDA contact person. FDA will forward all nominations to the organizations that have expressed interest in participating in the selection process for that panel.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: June 24, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–15012 Filed 7–1–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment; Ryan White Comprehensive AIDS Resources Emergency (CARE) Act; Reauthorization Workgroup

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of opportunity to provide written comments.

SUMMARY: On May 15, 2003, the Centers for Disease Control and Prevention (CDC)/Health Resources and Services Administration (HRSA) Advisory Committee on HIV and STD Prevention and Treatment (CHACHSPT) established the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act Reauthorization Workgroup. The workgroup is seeking public input about future HIV/AIDS care program directions pertaining to resource allocation issues related to the third reauthorization of the Ryan White CARE Act. The CHACHSPT will subsequently submit a set of formal recommendations relating to resource allocation issues for reauthorization of the Ryan White CARE Act to the HRSA Administrator and the Secretary of the Department of Health and Human Services.

DATES: To be assured of consideration, written comments should be postmarked no later than July 30, 2004.

ADDRESSES: Written comments should be sent to the CHACHSPT, c/o HRSA, HIV/AIDS Bureau, Office of Policy and Program Development, Attention: Shelley Gordon, Parklawn Building, Room 7–18, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Ms. Shelley Gordon, HRSA, HIV/AIDS Bureau, Office of Policy and Program Development, (301) 443–9684, fax (301) 443–3323, or e-mail: *SGordon@hrsa.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the request for comments is to obtain public input regarding resource allocation issues related to the Ryan White CARE Act, as amended. Resource allocation issues relate to the CARE Act provisions or statutory requirements which affect the distribution of funds across and within the various components of the CARE Act.

In 2003, the CHACHSPT carefully examined all aspects of the CARE Act and considered testimony from three public meetings held around the country designed to gather suggestions about future program directions in HIV and AIDS care and treatment programs. The CHACHSPT developed recommendations which were adopted by the Committee in November 2003 and formally submitted to the HRSA Administrator and the Secretary of the Department of Health and Human Services in 2004. Since that time, the report on Public Financing and Delivery of HIV Care was released by the Institute of Medicine, and new and ongoing issues about HIV/AIDS resources have been raised by communities and CARE constituents. Therefore, further examination by the CHACHSPT of resource allocation issues is desired.

Written comments should be limited to no more than 10 single-spaced pages (or 20 double-spaced) and should contain the name, address, telephone and fax numbers, and any organizational affiliation of the person(s) providing written comments. Respondents may be contacted by the CHACHSPT Ryan White CARE Act Reauthorization Workgroup to answer questions regarding their submitted comments. We are particularly interested in comments which address the following issues:

1. The use of HIV case reporting and service utilization data to determine eligibility under Title I and funding under Titles I and II of the CARE Act;

2. Changes to the existing Titles I and II hold harmless provisions;

3. Changes in the percentages of the Title I grant awarded by formula and competitively;

4. Changes in the percentages of the Title II AIDS Drug Assistance Program (ADAP) distributed by formula and supplemental awards;

5. Comparability and portability of the ADAP; and

6. Institute of Medicine report on: "Public Financing and Delivery of HIV Care: Securing the Legacy of Ryan White."

(Authority: Pub. L. 92–463 (5 U.S.C., App. 2); 42 U.S.C. 217a, Sec. 222 of the Public Health Service Act)

Dated: June 25, 2004.
Elizabeth M. Duke,
Administrator.
[FR Doc. 04–15088 Filed 7–1–04; 8:45 am]
BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part A (Office of the Secretary) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (HHS) to reflect a realignment of functions within the Office of Inspector General's (OIG) Immediate Office of the Inspector General (IOIG), Office of Management and Policy (OMP), Office of Evaluation and Inspections (OEI), Office of Counsel to the Inspector General (OCIG), Office of Audit Services (OAS), and Office of Investigations (OI). The statement of organization, functions, and delegations of authority conforms to and carries out the statutory requirements for operating OIG. Chapter AF was last published in its entirety on October 28, 1997.

The realignment of functions within IOIG, OMP, OEI, OCIG, OAS, and OI has been done to allow greater staff flexibility and to better reflect the current work environment and priorities within OIG. In addition, this notice sets forth a number of technical changes in Chapter AF that serve to update references to office titles and clarify OIG's organizational structure and responsibilities with respect to information technology.

As amended, Chapter AF now reads as follows:

Section AF.00, Office of Inspector General—Mission

The Office of Inspector General (OIG) was established by law as an independent and objective oversight unit of the Department to carry out the mission of promoting economy, efficiency and effectiveness through the elimination of waste, abuse and fraud. In furtherance of this mission, the organization:

A. Conducts and supervises audits, investigations, inspections and evaluations relating to HHS programs and operations.

B. Identifies systemic weaknesses giving rise to opportunities for fraud and abuse in HHS programs and operations and makes recommendations to prevent their recurrence.

C. Leads and coordinates activities to prevent and detect fraud and abuse in HHS programs and operations.

D. Detects wrongdoers and abusers of HHS programs and beneficiaries so appropriate remedies may be brought to bear.

E. Keeps the Secretary and the Congress fully and currently informed about problems and deficiencies in the administration of HHS programs and operations and about the need for and progress of corrective action, including imposing sanctions against providers of health care under Medicare and Medicaid who commit certain prohibited acts.

In support of its mission, OIG carries out and maintains an internal quality assurance system and a peer review system with other Offices of Inspectors General, including periodic quality assessment studies and quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards, and other requirements are followed, are effective, and are functioning as intended in OIG operations.

Section AF.10, Office of Inspector General—Organization

There is at the head of OIG a statutory Inspector General, appointed by the President and confirmed by the Senate. This office consists of six organizational units:

A. Immediate Office of the Inspector General (AFA).

B. Office of Management and Policy (AFC).

C. Office of Evaluation and Inspections (AFE).

D. Office of Counsel to the Inspector General (AFG).

E. Office of Audit Services (AFH).

F. Office of Investigations (AFJ).

Section AF.20, Office of Inspector General—Functions

The component sections that follow describe the specific functions of the organization.

Section AFA.00, Immediate Office of the Inspector General—Mission

The Immediate Office of the Inspector General (IOIG) is directly responsible for meeting the statutory mission of OIG as a whole and for promoting effective OIG internal quality assurance systems, including quality assessment studies and quality control reviews of OIG processes and products. The office also plans, conducts and participates in a variety of interagency cooperative projects and undertakings relating to fraud and abuse with the Department of Justice (DOJ), the Centers for Medicare & Medicaid Services (CMS) and other governmental agencies, and is responsible for the reporting and legislative and regulatory review functions required by the Inspector General Act.

Section AFA.10, Immediate Office of the Inspector General—Organization

IOIG is comprised of the Inspector General, the Principal Deputy Inspector General and an immediate office staff, including the Office of External Affairs.

Section AFA.20, Immediate Office of the Inspector General—Functions

As the senior official of the organization, the Inspector General supervises the Chief Counsel to the Inspector General and the Deputy Inspectors General who head the major OIG components. The Inspector General is appointed by the President, with the advice and consent of the Senate, and reports to and is under the general supervision of the Secretary or, to the extent such authority is delegated, the Deputy Secretary, but does not report to and is not subject to supervision by any other officer in the Department. In keeping with the independence conferred by the Inspectors General Act, the Inspector General assumes and exercises, through line management, all functional authorities related to the administration and management of OIG and all mission-related authorities stated or implied in the law or delegated directly from the Secretary.

The Inspector General provides executive leadership to the organization and exercises general supervision over the personnel and functions of its major components. The Inspector General determines the budget needs of OIG, sets OIG policies and priorities, oversees OIG operations and provides reports to the Secretary and the Congress. By statute, the Inspector General exercises general personnel authority, *e.g.*, selection, promotion, and assignment of employees, including members of the senior executive service. The Inspector General delegates related authorities as appropriate.

The Principal Deputy Inspector General assists the Inspector General in the management of OIG, and during the absence of the Inspector General, acts as the Inspector General.

The Office of External Affairs is comprised of three components—Public Affairs, Legislative and Regulatory Affairs, and the Executive Secretariat. The office conducts and coordinates reviews of existing and proposed legislation and regulations related to HHS programs and operations to

identify their impact on economy and efficiency and their potential for fraud and abuse. It serves as contact for the press and electronic media and serves as OIG congressional liaison. The office prepares or coordinates congressional testimony and confers with officials in the Office of the Secretary staff divisions on congressional relations, legislation and public affairs. The office compiles the *Office of Inspector General Semiannual Report to the Congress* and certain legislatively mandated reports to the Congress. It develops and publishes OIG newsletters and other issuances to announce and promote OIG activities and accomplishments. The office also has primary responsibility for developing and promulgating all OIG regulations for codification into the Code of Federal Regulations, and for preparing all OIG related notices and other documents for **Federal Register** publication.

Section AFC.00, Office of Management and Policy—Mission

The Office of Management and Policy (OMP) provides mission support services to the Inspector General and other components. The office formulates and executes the budget, develops functional policies for the general management of OIG, and manages information technology resources.

In support of its mission, the office carries out and maintains an internal quality assurance system. The system includes quality control reviews of OMP processes and products to ensure that policies and procedures are followed effectively and function as intended.

Section AFC.10, Office of Management and Policy—Organization

The office is directed by the Deputy Inspector General for Management and Policy and the Assistant Inspector General for Information Technology. The office is comprised of the following components:

A. Administrative Operations.
B. Information Technology.
C. Planning and Performance.

Section AFC.20, Office of Management and Policy—Functions

A. Administrative Operations

The office formulates and oversees the execution of the budget and confers with the Office of the Secretary, the Office of Management and Budget, and the Congress on budget issues. It issues quarterly grants to States for Medicaid Fraud Control Units. It conducts management studies and analyzes and establishes and coordinates general management policies for OIG and publishes those policies in the OIG Administrative Manual. It serves as OIG liaison to the Office of the Secretary for personnel issues and other administrative policies and practices, and on equal employment opportunity and other civil rights matters. It coordinates internal control reviews for OIG.

B. Information Technology

The office is responsible for information resources management (IRM), as defined by the Paperwork Reduction Act, OMB Circular A–130, the Federal Information Resources Management regulations, the Computer Security Act of 1987, the Clinger-Cohen Act, the Federal Information Security Management Act of 2002, HHS IRM Circulars, and by related guidance. The office also provides nationwide information technology support to OIG through management of its local area networks, provision of computer end-user and direct mission information technology (IT) support, maintenance of OIG information systems, and safeguarding sensitive information and IT resources. The Assistant Inspector General for Information Technology, who reports to the Inspector General through the Deputy Inspector General for Management and Policy, serves as Chief Information Officer. In addition, the office operates a toll-free hotline for OIG to permit individuals to call in suspected fraud, waste, or abuse; refers the calls for appropriate action by HHS agencies or other OIG components; and analyzes the body of calls to identify trends and patterns of fraud and abuse needing attention.

C. Planning and Performance

This office coordinates the development of the work planning process, including strategic long-range planning, tactical planning and the annual work plan coordination and production. It also is responsible for overseeing emergency operations and national security classification policy, and for coordinating updates of the Red Book, which addresses unimplemented OIG recommendations to reduce fraud, waste and abuse.

Section AFE.00, Office of Evaluation and Inspections—Mission

The Office of Evaluation and Inspections (OEI) is responsible for conducting a comprehensive set of in-depth evaluations of HHS programs, operations and processes to identify vulnerabilities, to prevent and detect fraud, waste and abuse, and to promote efficiency and effectiveness in HHS programs and operations.

Section AFE.10, Office of Evaluation and Inspections—Organization

This office is comprised of the following components:

A. Immediate Office.
B. Policy and Oversight Division.
C. Program Evaluations Division.
D. Regional Operations.
E. Technical Support Staff.

Section AFE.20, Office of Evaluation and Inspections—Functions

A. Immediate Office of the Deputy Inspector General for OEI

This office is directed by the Deputy Inspector General for OEI who, with the assistance of an Assistant Inspector General, is responsible for carrying out OIG's evaluations mission and supervises the Directors for Policy and Oversight, Program Evaluations, Regional Operations, and Technical Support. This office is also responsible for the oversight of the State Medicaid Fraud Control Units and for certifying and recertifying these units and for auditing their Federal funding.

B. Policy and Oversight

This office develops OEI's evaluation and inspection policies, procedures and standards. It manages OEI's human and financial resources; develops and monitors OEI's management information systems; and conducts management reviews within the HHS/OIG and for other OIGs upon request. The office carries out and maintains an internal quality assurance system. The system includes quality assessment studies and quality control reviews of OEI processes and products to ensure that policies and procedures are effective, are followed, and are functioning as intended.

C. Program Evaluations

This office manages OEI's work planning process, and develops and reviews legislative, regulatory and program proposals to reduce vulnerabilities to fraud, waste and mismanagement. It develops evaluation techniques and coordinates projects with other OIG and Departmental components. It provides programmatic expertise and information on new programs, procedures, regulations and statutes to OEI regional offices. It maintains liaison with other components in the Department, follows up on implementation of corrective action recommendations, evaluates the actions taken to resolve problems and vulnerabilities identified, and provides additional data or corrective action options, where appropriate.

D. Regional Operations

This office is responsible for OEI's mission in the field. The regional offices conduct extensive evaluations of HHS programs and produce the results in inspection reports. They conduct data and trend analyses of major HHS initiatives to determine the effects of current policies and practices on program efficiency and effectiveness. They recommend changes in program policies, regulations and laws to improve efficiency and effectiveness, and to prevent fraud, abuse, waste and mismanagement. They analyze existing policies to evaluate options for future policy, regulatory and legislative improvement.

E. Technical Support

This office provides statistical and database advice and services for inspections conducted by the regional offices. It carries out analyses of large databases to identify potential areas of fraud and abuse and provides technical assistance to the regional offices for these purposes.

Section AFG.00, Office of Counsel to the Inspector General—Mission

The Office of Counsel to the Inspector General (OCIG) is responsible for providing all legal services and advice to the Inspector General, Principal Deputy Inspector General and all the subordinate components of the Office of Inspector General, in connection with OIG operations and administration, OIG fraud and abuse enforcement and compliance activities, and OIG activities designed to promote efficiency and economy in the Department's programs and operations. OCIG is also responsible for proposing and litigating civil money penalty (CMP) and program exclusion cases within the jurisdiction of OIG, for coordinating False Claims Act and criminal, civil and administrative fraud and abuse law enforcement matters, and for resolving voluntary disclosure cases. OCIG develops guidance to assist providers in establishing compliance programs; monitors ongoing compliance of providers subject to integrity agreements; and promotes industry awareness through the issuance of advisory opinions, fraud alerts, and special advisory bulletins.

Section AFG.10, Office of Counsel to the Inspector General—Organization

The office is directed by the Chief Counsel to the Inspector General and the Assistant Inspector General for Legal Affairs. The office is comprised of the following components:

A. Advice.

B. Administrative and Civil Remedies.

C. Industry Guidance.

Section AFG.20, Office of Counsel to the Inspector General—Functions

A. Advice

This office provides legal advice to the various components of OIG on issues that arise in the exercise of OIG's responsibilities under the Inspector General Act of 1978. Such issues include the scope and exercise of the Inspector General's authorities and responsibilities; investigative techniques and procedures (including criminal procedure); the sufficiency and impact of legislative proposals affecting OIG; and the conduct and resolution of investigations, audits and inspections. The office evaluates the legal sufficiency of OIG recommendations and develops formal legal opinions to support these recommendations. When appropriate, the office coordinates formal legal opinions with the HHS Office of the General Counsel. The office provides legal advice on OIG internal administration and operations, including appropriations, delegations of authority, ethics, OIG regulations, personnel matters, the disclosure of information under the Freedom of Information Act and the safeguarding of information under the Privacy Act. The office is responsible for conducting and coordinating litigation activities on personnel and Equal Employment Opportunity matters and Federal tort actions involving OIG employees. The office is responsible for the clearance and enforcement of subpoenas issued by OIG, and defends OIG in litigation matters as necessary.

B. Administrative and Civil Remedies

1. This office is responsible for determining whether to propose or implement administrative sanctions, including CMPs within the jurisdiction of OIG, assessments, and program exclusions. The office, in conjunction with the Office of Investigations (OI), effectuates all mandatory and permissive exclusions from participation in Federal health care programs under the Social Security Act; decides on all requests for reinstatement from, or waiver of, exclusions; and participates in developing standards governing the imposition of these exclusion authorities. The office litigates appeals of program exclusions before the Departmental Appeals Board and assists DOJ in handling any subsequent appeals of such cases to the Federal courts.

2. The office reviews all cases referred by CMS under the patient anti-dumping authority of the Social Security Act and, where appropriate, proposes and litigates CMPs with respect to hospitals, and CMPs and program exclusions with respect to physicians, for violations of the patient anti-dumping statute.

3. The office proposes and litigates CMPs, assessments and program exclusions under the CMP law and other CMP authorities delegated to OIG.

4. In coordination with DOJ, the office handles all False Claims Act cases, including *qui tam* cases, and is responsible for final sign-off on False Claims Act settlements for the Department, including the resolution of the CMP and program exclusion authorities that have been delegated to OIG. It participates in settlement negotiations and provides litigation support. The office, in conjunction with OI, coordinates resolution of all voluntary disclosure cases, both under the OIG Self-Disclosure Protocol and otherwise, through: Liaison activities with DOJ and the U.S. Attorney's office; the disclosure verification efforts of the Office of Audit Services (OAS) and OI; and final disposition and sign-off of the matter. The office is responsible for developing and maintaining a comprehensive and coordinated database on all settled and pending False Claims Act and CMP cases under its authority.

5. The office also develops and monitors corporate and provider integrity programs adopted as part of settlement agreements, conducts on-site reviews, and develops audit and investigative review standards for monitoring such plans in cooperation with other OIG components. The office resolves breaches of integrity agreements through the development of corrective action plans and through the imposition of sanctions.

C. Industry Guidance

This office is responsible for drafting and issuing advisory opinions to the health care industry and members of the public on whether an activity (or proposed activity) would constitute grounds for the imposition of a sanction under the anti-kickback statute, the CMP law or the program exclusion authorities, and on other issues pertaining to the anti-kickback statute. The office develops and updates procedures for the submission of requests for advisory opinions and for determining the fees that will be imposed. The office solicits and responds to proposals for new regulatory safe harbors to the anti-kickback statute, modifications to existing safe harbors, and new fraud alerts. The office consults with DOJ on all proposed advisory opinions and safe

harbors before issuance or publication. The office provides legal advice to the various components of OIG, other offices of the Department, and DOJ concerning matters involving the interpretation of the anti-kickback statute and other legal authorities, and assists those components or offices in analyzing the applicability of the anti-kickback statute to various practices or activities under review.

Section AFH.00 Office of Audit Services—Mission

The Office of Audit Services (OAS) provides policy direction for and conducts and oversees comprehensive audits of HHS programs, operations, grantees and contractors, following generally accepted government auditing standards (GAGAS), the Single Audit Act of 1984, applicable Office of Management and Budget (OMB) circulars and other legal, regulatory and administrative requirements. This includes investigative audit work performed in conjunction with other OIG components. The office maintains an internal quality assurance system, including periodic quality assessment studies and quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all audit activities performed for, or on behalf of, the Department. In furtherance of this mission, the organization engages in a number of activities:

A. The office coordinates and confers with officials of the central Federal management agencies (OMB, the General Accounting Office (GAO), the Office of Personnel Management (OPM) and the Department of the Treasury) on audit matters involving HHS programs and operations. It provides technical assistance to Federal, State and local investigative offices on matters involving HHS programs and operations. It participates in interagency efforts implementing OMB Circular 133, which calls for use of the single audit concept for most external audits, as well as reviews the quality of those audits as they pertain to HHS oversight responsibilities. It performs audits of activities administered by other Federal departments, following the system of audit cognizance administered by OMB. It participates in the President's Council on Integrity and Efficiency (PCIE) initiatives and other governmentwide projects; works with other OIG components on special assignments and projects; and responds to congressional oversight interests related to audit matters in the Department.

B. The office provides comprehensive audit services to HHS operating divisions (OPDIVs) and the Office of the Secretary staff divisions (STAFFDIVs) in their development of program policies and management of grants and procurement and in their establishment of indirect cost rates. The office also performs pre-award audits of grant or contract proposals to determine the financial capability of the grantees or contractors and conducts post-award audits.

C. The office reviews legislative, regulatory and policy proposals for audit implications. It recommends improvements in the accountability and integrity features of legislation, regulations and policy. It prepares reports of audits and special studies for the Secretary, heads of HHS OPDIVs, regional directors and others. It gathers data on unresolved audit findings for the statutorily required semiannual reports to the Congress and reconciles resolution data with the Department OPDIVs as required by the Inspector General Act of 1978, as amended by Inspector General Act Amendments of 1988 (Pub. L. 100–504). It conducts follow-up examinations and special analyses of actions taken on previously reported audit findings and recommendations to ensure completeness and propriety. The office provides input to the Office of Inspector General Semiannual Report to the Congress and produces summaries for both (1) the Orange Book—a summary of unimplemented program and management improvements recommended—and (2) the Red Book—a summary of significant monetary recommendations not yet implemented.

D. The office serves as the focal point for all financial management audit activity within the Department and provides the primary liaison conduit between the OIG and Departmental management. It also provides overall leadership and direction in carrying out the responsibilities mandated under the Chief Financial Officers Act relating to financial statement audits.

Section AFH.10, Office of Audit Services—Organization

The office is comprised of the following components:

A. Immediate Office.

B. Financial Management, Regional Operations, and Information Technology Audits

C. Centers for Medicare and Medicaid Services Audits.

D. Grants and Internal Activities Audits.

E. Audit Management and Policy.

Section AFH.20. Office of Audit Services—Functions

A. Immediate Office of the Deputy Inspector General for Audit Services

This office is directed by the Deputy Inspector General for Audit Services who carries out the functions designated in the law (section 3(d)(1) of the Inspectors General Act) for the position, Assistant Inspector General for Auditing. The Deputy Inspector General for Audit Services is responsible to the Inspector General for carrying out OIG's audit mission and supervises the Assistant Inspectors General heading OAS offices described below.

B. Financial Management, Regional Operations, and Information Technology Audits

This office is directed by the Assistant Inspector General for Financial Management and Regional Operations. In addition to directing this office, the Assistant Inspector General supervises the eight Regional Inspectors General for Audit Services. The office's principal functions include the direct-line responsibility for audits of financial statements and financial statement-related audits, including internal audits of functional areas within the Department, and directing field audit operations.

1. The office serves as the focal point for all financial statement and financial statement-related audit activity within the Department and serves as the primary liaison conduit between OIG and Departmental management.

2. The office provides oversight for audits of governments, universities and nonprofit organizations conducted by non Federal auditors (external audit resources) and those under contract with OIG.

3. The office reviews the design, development and maintenance of Department computer-based systems through the conduct of comprehensive audits of general and application controls in accordance with GAO's Federal Information System Controls Audit Manual and develops and applies advanced computer-based audit techniques for use in detecting fraud, waste and abuse in HHS programs.

4. The office maintains an internal quality assurance system that provides reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all financial management audit activities performed by the office, or on behalf of the Department.

C. Centers for Medicare and Medicaid Services Audits

This office is directed by the Assistant Inspector General for Centers for Medicare and Medicaid Services (CMS) Audits. The office conducts audits of CMS program operations and oversees nationwide the audits of the Medicare and Medicaid programs, their contractors, and providers of services and products. It maintains an internal quality assurance system to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all CMS audit activities performed by, or on behalf of, the Department.

D. Grants and Internal Activities Audits

This office is directed by the Assistant Inspector General for Grants and Internal Activities Audits. The office conducts and oversees audits of the operations and programs of the Administration for Children and Families, the Administration on Aging, and the Public Health programs, as well as Statewide cost allocation plans. It maintains an internal quality assurance system, including periodic quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in its audit activities.

E. Audit Management and Policy

This office is directed by the Assistant Inspector General for Audit Management and Policy. The office manages the human and financial resources of OAS, including developing staffing allocation plans and issuing policy for, coordinating and monitoring all budget, staffing, recruiting, and training activities of the office. It maintains a professional development program for office staff, which meets the requirements of Government auditing standards. The office evaluates audit work, including performing quality control reviews of audit reports, and coordinates the development of and monitors audit work plans. It operates and maintains an OAS-wide quality assurance program that includes the conduct of periodic quality control reviews. It develops audit policy, procedures, standards, criteria and instructions to be followed by OAS staff in conducting audits of Departmental programs, grants, contracts or operations. Such policy is developed in accordance with GAGAS and other legal, regulatory and administrative requirements. The office tracks, monitors and reports on audit resolution and follow-up in accordance with OMB Circular A–50, "Audit Follow-up," and the 1988 Inspector General Act Amendments. The office coordinates with other OIG components in developing the Work Plan and provides input to the Office of Inspector Semiannual Report to the Congress.

Section AFJ.00, Office of Investigations—Mission

The Office of Investigations (OI) is responsible for conducting and coordinating investigative activities related to allegations of fraud, waste, abuse and mismanagement in HHS programs by applicants, grantees, contractors, or by HHS employees in the performance of their official duties. It serves as OIG liaison to DOJ on all matters relating to investigations of HHS programs and personnel, and reports to the Attorney General when OIG has reasonable grounds to believe Federal criminal law has been violated. The office serves as a liaison with CMS, State licensing boards, and other outside organizations and entities with regard to exclusion, compliance and enforcement activities. It works with other investigative agencies and organizations on special projects and assignments. In support of its mission, the office carries out and maintains an internal quality assurance system. The system includes quality assessment studies and quality control reviews of OI processes and products to ensure that policies and procedures are followed effectively, and are functioning as intended.

Section AFJ.10, Office of Investigations—Organization

This office comprises the following components:

A. Immediate Office.

B. Investigative Operations.

C. Investigative Oversight and Support.

Section AFJ.20, Office of Investigations—Functions

A. Immediate Office of the Deputy Inspector General for Investigations

This office is directed by the Deputy Inspector General for Investigations who is responsible for the functions designated in the law for the position, Assistant Inspector General for Investigations. The Deputy Inspector General for Investigations supervises the Assistant Inspector General for Investigative Operations and the Assistant Inspector General for Investigative Oversight and Support who head the offices described below.

The Deputy Inspector General for Investigations is responsible to the Inspector General for carrying out the investigative mission of OIG and for leading and providing general supervision to the investigative component. The Immediate Office coordinates quality assurance studies to ensure that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all investigative activities performed by, or on behalf of, the Department.

B. Investigative Operations

The Assistant Inspector General for Investigative Operations, who supervises a headquarters staff and the Special Agents in Charge, directs this office.

1. The headquarters staff assists the Deputy Inspector General for Investigations in establishing investigative priorities, evaluating the progress of investigations, and reporting to the Inspector General on the effectiveness of investigative efforts. It develops and implements investigative techniques, programs, guidelines, and policies. It provides programmatic expertise and issues information on new programs, regulations and statutes. It directs and coordinates the investigative regional offices.

2. The headquarters staff reviews completed reports of investigations to ensure accuracy and compliance with guidelines. It issues the reports to pertinent agencies, management officials and the Secretary and recommends appropriate debarment actions, administrative sanctions, CMPs and other civil actions, or prosecution under criminal law. It identifies systemic and programmatic vulnerabilities in the Department's operations and makes recommendations for change to the appropriate managers. The office reviews proposed legislation, regulations, policies and procedures to identify vulnerabilities and recommends modification where appropriate. The office coordinates with the other OIG components in developing the Work Plan and provides input to the Office of Inspector General Semiannual Report to the Congress. It reviews investigative files in response to Privacy and Freedom of Information Act requests, and serves as OIG liaison to the Office of the Secretary for Freedom of Information and Privacy Act requests.

3. The staff provides for the personal protection of the Secretary.

4. The regional offices conduct investigations of allegations of fraud, waste, abuse, mismanagement and violations of standards of conduct within the jurisdiction of OIG in their assigned geographic areas. They coordinate investigations and confer

with HHS operating divisions, staff divisions, OIG counterparts and other investigative and law enforcement agencies. They prepare investigative and management improvement reports.

5. The office maintains an automated data and management information system used by all OI managers and investigators. It provides technical expertise on computer applications for investigations and coordinates and approves investigative computer matches with other agencies. The office directs and manages criminal investigations into electronic and/or computer-related violations.

6. The office develops all health care mandatory and permissive program exclusions, and ensures enforcement of exclusions imposed through liaison with CMS, DOJ and other governmental and private sector entities. It is responsible for developing, improving and maintaining a comprehensive OIG database on all OIG exclusion actions, and promptly and accurately reports all exclusion actions within its authority to the database. It informs appropriate regulatory agencies, health care providers and the general public of all OIG exclusion actions, and is responsible for improving public access to information on these exclusion actions to ensure that excluded individuals and entities are effectively barred from program participation.

C. Investigative Oversight and Support

This office is directed by the Assistant Inspector General for Investigative Oversight and Support who performs the general management functions of the office.

1. This office manages the human and financial resources of OI, including developing staffing allocation plans and issuing policy for coordination and monitoring all budget, staffing and recruiting.

2. This office plans, develops, implements and evaluates all levels of employee training for investigators, managers, support staff and other personnel. It oversees a law enforcement techniques and equipment program.

3. This office coordinates the general management processes, implements policies and procedures published in the OIG Administrative Manual and elsewhere. It also coordinates a national inspection program to ensure compliance with the Federal Managers Financial Integrity Act, the President's Council on Integrity and Efficiency, and Attorney General guidelines.

Dated: June 1, 2004.

Dara Corrigan,

Acting Principal Deputy Inspector General.

[FR Doc. 04–15058 Filed 7–1–04; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, National Cancer Institute.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Cancer Institute.

Date: July 27, 2004.

Time: 12 p.m. to 1 p.m.

Agenda: The purpose of the meeting will be to discuss the "Women, Tobacco, and Cancer: An Agenda for the 21st Century" report prepared by the Women, Tobacco, and Cancer Working Group.

Place: National Cancer Institute, National Institutes of Health, Building 31, Room 11A03, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Cherie Nichols, Executive Secretary, National Cancer Institute, National Institutes of Health, Building 31, Room 11A03, Bethesda, MD 20892, (301) 496–5515.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/joint/htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398; Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 25, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15016 Filed 7–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: June 28, 2004.

Time: 12 p.m. to 1 p.m.

Agenda: Future of the DCLG.

Place: National Institutes of Health, 6116 Executive Boulevard, Suite 220, Room 2218, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Elisabeth Handley, Acting Director, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 220, Bethesda, MD 20852, (301) 402–5575.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm*, where an agenda and any additional infromation for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: June 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15025 Filed 7–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date: June 30, 2004.

Time: 1 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, Democracy One Plaza, 6701 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Barbara J. Nelson, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, NIH, 6701 Democracy Blvd., Room 1080, 1 Democracy Plaza, Bethesda, MD 20892, (301) 435–0806.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: June 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15027 Filed 7–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Career and Research Grant Applications.

Date: August 2, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Houmam H Araj, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, NIH, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892–9602, 301–451–2020, *haraj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15026 Filed 7–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Impact of Neonatal Heart Rate Characteristics Monitoring.

Date: July 14, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Rita Anand, PhD, Scientific Review, National Institute of Child Health and Human Development, NIH 6100 Executive Blvd. Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 25, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15015 Filed 7–1–04; 8:45 am]

BILLING CODE 4147–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Review of Research Program Project (P01's) Applications.

Date: August 12, 2004.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 25, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15017 Filed 7–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Murine Atlas of Genitourinary Development.

Date: July 8, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott Arlington Crystal City, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Lakshimanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, Niddk, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *1s38oz@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Clinical Outcomes Research of an Endoscopic Data Base.

Date: July 15, 2004.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: D. G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, Niddk, National Institutes of Health, room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Behavioral and Nutrition Tx to Help CF Preschoolers Grow.

Date: July 16, 2004.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, Niddk, National Institutes of Health, room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Studies of KLF4.

Date: July 20, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, Niddk, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Chronic Renal Insufficiency.

Date: July 21, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, Niddk, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Pulse Wave and Kidney Disease.

Date: July 22, 2004.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, Niddk, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ancillary Studies to Obesity-Related Clinical Trials.

Date: August 2, 2004.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, Niddk, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848; Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 25, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15018 Filed 7–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Unsolicited Research Project.

Date: July 14, 2004.

Time: 12 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Roberta Binder, PhD, Scientific Review Administrator, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, Rm 2155, Bethesda, MD 20892, (301) 496–7966, *rb169n@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15021 Filed 7–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Monoamine Functions in Drosphila Female Reproduction.

Date: July 23, 2004.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15022 Filed 7–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, National Research Service Award Postdoctural Application.

Date: July 23, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Brian R. Pike, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18K, Bethesda, MD 20892, 301–594–3907, *pikbr@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15023 Filed 7–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Genomics of Transplantation Cooperative Research Program.

Date: July 13–14, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Terrace Room, Chevy Chase, MD 20815.

Contact Person: Edward W. Schroder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 435–8537, *eschroder@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS.)

Dated: June 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15024 Filed 7–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1: SBIB–H (30) I: Shared Instrumentation.

Date: June 28, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Arthur A. Petrosian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1259, *petrosia@csr.nig.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1: SBIB–F (02) M: Member Conflict.

Date: June 28, 2004.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175. *nordstrr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBMI 13: Small Business Medical Imaging: Ultrasound.

Date: June 28, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *nordstrr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BSPH and BSCH Member Conflicts.

Date: July 9, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW. Washington, DC 20007.

Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, (301) 435–1775, *rubertm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; V D J Rearrangements i Lymphocytes.

Date: July 12, 2004.

Time: 9:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, *haydenb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biobehavioral Regulation, Learning and Ethology.

Date: July 12, 2004.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261, *wiggsc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Ethical, Legal, Social Implications of Human Genetics-1.

Date: July 14–15, 2004.

Time: 6:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, Building 31, Room B2B37, Bethesda, MD 20892, (301) 402–0838, *pozzattr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nanotechnology Review Panel.

Date: July 15–16, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Avenue NW., Washington, DC 20037.

Contact Person: John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1725, *bowersj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Acute Critical and Traumatic Brain and Neural Cell Injury.

Date: July 15–16, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Embassy Row Hotel, 2100 Massachusetts Avenue, NW., Washington DC 20008.

Contact Person: David L. Simpson, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 435–1278, *simpsond@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Predoctoral Fellowships in Molecular and Cellular Mechanisms.

Date: July 15–16, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: Richard D. Rodewald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024, *rodewalr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cardiovascular Sciences Small Business Activities Special Emphasis Panel.

Date: July 15–16, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lawrence E. Boerboom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group; International and Cooperative Projects 1 Study Section.

Date: July 15–16, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Sandy Warren, DMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7843, Bethesda, MD 20892, (301) 435–1019, *warrens@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Instrumentation and System Development.

Date: July 15–16, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Ping Fan, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–435–1740, *fanp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Health of the Population SBIR/STTR Special Emphasis Panel.

Date: July 15–16, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Denise Wiesch, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *wieschd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemical and Bioanalytical Sciences.

Date: July 15–16, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: David R. Jollie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Psychopathology and Adult Disorders.

Date: July 15–16, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Preschool Psychiatic Problems.

Date: July 15, 2004.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anna L. Riley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cognition.

Date: July 15, 2004.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genetics of Familial Cardiomyopathy.

Date: July 15, 2004.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurogenic Cardiovascular Disease.

Date: July 15, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, 301–435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; SBIR At-Risk Children and Parent Training.

Date: July 15, 2004.

Time: 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Clair E. Gutkin, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation Grant (S10) Program: Surface Plasmon Resonance Instruments.

Date: July 16, 2004.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; SBIR Addiction Services and Youth Intervention Programs.

Date: July 16, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Clair E. Gutkin, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation Grant (S10) Program: Surface Plasmon Resonance Instruments.

Date: July 16, 2004.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Samuel C. Edwards, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Visual Pathways: Member Conflicts.

Date: July 16, 2004.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientifc Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Ethanol Discrimination: NAL Member Conflict.

Date: July 16, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1713, *melchioc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: June 25, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15014 Filed 7–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, R01 Application.

Date: June 29, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026, *nayakr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel to Review One Member Conflict Application.

Date: July 2, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, (301) 435–1775, *rubertm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Pain—Member Conflicts.

Date: July 15, 2004.

Time: 11:00 p.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, (301) 435–2212, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ONC–J 02M: COX–2 Inhibition of T-cells in Human Lung CA.

Date: July 15, 2004.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717, *padaratm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Conflicts in Biophysics and Chemistry.

Date: July 16, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Donald L. Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, O-glycosylation of Epidermal Growth Factor Molecules.

Date: July 19, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael M. Sveda, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel MDCN Fellowship Review Meeting.

Date: July 19–20, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vaccines Against Microorganism-Caused Diseases: Small Business Applications.

Date: July 19–20, 2004.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, NW., Meridian Room, Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222, *nigidas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Partner Aggression.

Date: July 19, 2004.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Bioengineering—Neuro Robotics and Control Devices.

Date: July 19, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–435–2212, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1SBIBG (50) 2 SAT Member Conflict.

Date: July 19, 2004.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul F. Parakkal, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–435–1176 *parakkap@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Applications for CLHP Study Section.

Date: July 19, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, 301–435–0681, *schwarte@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Romantic Relationships in Young Adulthood.

Date: July 19, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anna L. Riley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Children's Substance Use Outcomes.

Date: July 19, 2004.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anna L. Riley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biochemistry and Biology of ADAMTS-like Proteins.

Date: July 20, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael M. Sveda, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Adolescent Mothers' Traumatic Experiences.

Date: July 20, 2004.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anna L. Riley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; HSOD Members.

Date: July 20, 2004.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yvette M. Davis, Mph, VMD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906, *davis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biomaterials and Biosensors Panel.

Date: July 20, 2004.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sally Ann Ameo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7849, Bethesda, MD 20892, 301–435–1159, *ameros@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: June 25, 2004.

LaVerne Y. Stingfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15019 Filed 7–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Urologic and Kidney Development and Genitoruinary Diseases Study Section, June 28, 2004, 8:30 a.m. to June 28, 2004, 5 p.m., The Fairmont, Washington, DC 20401, M Street, NW., Washington, DC 20037 which was published in the **Federal Register** on June 10, 2004, 69 FR 32600–32604.

The meeting will be two days June 28, 2004 to June 29, 2004. The meeting time and location remain the same. The meeting is closed to the public.

Dated: June 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15020 Filed 7–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Directorate of Information Analysis and Infrastructure Protection (IAIP); Open Meeting of National Infrastructure Advisory Council (NIAC)

AGENCY: Directorate of Information Analysis and Infrastructure Protection, DHS.

ACTION: Notice.

SUMMARY: The National Infrastructure Advisory Council (NIAC) will hold a briefing on the status of several Working Group activities that the Council undertook at its last meeting. The NIAC advises the President of the United States on the security of information systems for critical infrastructure supporting other sectors of the economy, including banking and finance, transportation, energy,

manufacturing, and emergency government services.

DATES: The NIAC will meet Tuesday, July 13, 2004, from 11 a.m. to 2 p.m.

ADDRESSES: The NIAC will meet at the National Press Club Ballroom, 529 14th St, NW., 13th floor, Washington, DC 20045. Written comments may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to NIAC members, the Council suggests that presenters forward the public presentation materials, ten days prior to the meeting date, to the following address Ms. Nancy J. Wong, Infrastructure Coordination Division, Directorate of Information Analysis and Infrastructure Protection, U.S. Department of Homeland Security, 14th Street and Constitution Avenue, NW., Room 6095, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Nancy J. Wong, 202–482–1929.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Limited seating will be available. Reservations are not accepted. Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Committee Meeting on July 13, 2004:

I. Opening of Meeting: Nancy J. Wong, U.S. Department of Homeland Security (DHS)/Designated Federal Official, NIAC
II. Roll Call of Members: NIAC Staff
III. Opening Remarks: Lt. Gen. Frank Libutti (USMC, ret.), Under Secretary for Information Analysis and Infrastructure Protection, DHS Homeland Security for Infrastructure Protection; (invited)
Frances Townsend, Assistant to the President and Homeland Security Advisor, Homeland Security Council; (invited)
Erle A. Nye, Chairman of the Board, TXU Corp.; Chairman, NIAC; and
John T. Chambers, President & CEO, Cisco Systems, Inc.; Vice Chairman, NIAC
IV. Status Reports on Pending Initiatives:
A. Hardening the Internet: George H. Conrades, Chairman & CEO, Akamai Technologies; NIAC Member
B. Prioritization of Cyber Vulnerabilities: Martin G. McGuinn, Chairman & CEO, Mellon Financial Corporation; NIAC Member
C. Common Vulnerability Scoring Subsystem: Vice Chairman Chambers; and John W. Thompson, Chairman & CEO, Symantec Corporation; NIAC Member
V. Final Report and Discussion on Evaluation Enhancement of Information Sharing Analysis: Thomas E. Noonan, Chairman, and President & CEO, Internet Security and Systems, Inc.;
VI. Adoption Of NIAC Recommendations: NIAC Members
VII. New Initiatives: Chairman Nye; NIAC Members
VIII. New Business: Chairman Nye; NIAC Members
IX. Adjournment

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished. At the discretion of the Chair, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Designated Federal Official and submit written material. If you would like a copy of your material distributed to each member of the Committee in advance of a meeting, please submit 25 copies to the Designed Federal Official (see **ADDRESSES** and **DATES**).

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Designated Federal Official as soon as possible.

Dated: June 28, 2004.

Nancy J. Wong,

Designated Federal Official for NIAC.

[FR Doc. 04–15130 Filed 7–1–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–18502]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: A working group of the Merchant Marine Personnel Advisory Committee (MERPAC) will meet to discuss task statement #43 concerning recommendations on a training and assessment program for able-bodied seamen on sea-going vessels. MERPAC advises the Secretary of Homeland Security on matters relating to the training, qualifications, licensing, certification, and fitness of seamen serving in the U.S. merchant marine. This meeting will be open to the public.

DATES: The MERPAC working group will meet on Monday, August 16, 2004 from 8:30 a.m. to 4 p.m. (local), and Tuesday, August 17, 2004, from 8:30 a.m. to noon (local). This meeting may adjourn early if all business is finished. Request to make oral presentations should reach the Coast Guard on or before August 2, 2004. Written material and requests to have a copy of your material distributed to each member of the working group should reach the Coast Guard on or before August 2, 2004.

ADDRESSES: The working group of MERPAC will meet at The Mariners House, 11 North Square, Boston, Massachusetts. Send written material and requests to make oral presentations to Mr. Mark Gould, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–6890, fax 202–267–4570, or e-mail *mgould@comdt.uscg.mil.* Further directions regarding the location of The Mariners House may be obtained by contacting Captain Michael Cicalese at (617) 227–3979.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of August 16–17, 2004 Meeting: The working group will meet to discuss Task Statement #43 "Recommendations on a Training and Assessment Program for Able-Bodied Seamen on Sea-going Vessels", which is available in Docket #[USCG–2004–18502]. The working group will develop a training program containing the minimum requirements for certification as an able-bodied seaman on sea-going vessels under the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), as amended. The working group will develop the training program into a table format similar to Section A of the STCW Code available for purchase from the International Maritime Organization, 4 Albert Embankment, London SE1 7SR, England. At the end of the meeting, the working group will re-cap its discussions and prepare the table for the full committee to consider at its next meeting.

Procedural

This meeting is open to the public. Please note that the meeting may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify Mr. Gould no later than August 2, 2004. Written material for distribution at the meeting should reach the Coast Guard no later than August 2, 2004. If you would like copy of your material distributed to each member of the committee or working group in advance of the meeting, please submit 25 copies to Mr. Gould no later than August 2, 2004.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Gould at the number listed in **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: June 28, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 04–15113 Filed 7–1–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–17465; formerly CGD 94–100]

Withholding of Vessel Clearances or Permits; Identification of Satisfactory Sureties in Lieu of Clearance or Permit Denial

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard is making available an optional standard form Letter of Undertaking that will be satisfactory for use in most minor civil penalty cases. Letters of undertaking are often proffered to the Coast Guard on behalf of vessels that might otherwise be denied clearance to leave port, due to possible statutory violations.

DATES: The optional standard form Letter of Undertaking is available for use on July 2, 2004.

ADDRESSES: The Department of Transportation's Docket Management Facility maintains the public docket for this notice, USCG–2004–17465. Comments and material received from the public will become part of this docket and will be available for inspection or copying at 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. You may also find this docket electronically, through the Web Site for the Docket Management System, *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice contact LCDR Sam Goswellen, Office of Investigations and Analysis (G–MOA), U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593–0001, telephone 202–267–0691, or email *sgoswellen@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Background

Under certain conditions, a U.S. or foreign flag vessel must obtain clearance from the Bureau of Customs and Border Protection (CBP) before it departs a port or place in the United States (see Title 46 Appendix, U.S. Code, sec. 91). The Coast Guard can ask CBP to deny or revoke the vessel's clearance if its owner, operator, or person in charge could be subject to a fine or civil penalty for violating one of the following statutes:

- Federal Water Pollution Control Act, 33 U.S.C. 1321(b)(12);
- Act to Prevent Pollution from Ships, 33 U.S.C. 1908(e), and implementing regulations;
- Ports and Waterways Safety Act, 33 U.S.C. 1232(f), and implementing regulations;
- Tank vessel operating or inspection requirements, 46 U.S.C. 3718(e), and implementing regulations in 33 CFR part 157 and 46 CFR parts 30 through 40 and 150 through 154;
- Inland Navigation Rules, 33 U.S.C. 2072(d); and
- Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended by the National Invasive Species Act, 16 U.S.C. 4711(g)(3).

In lieu of asking CBP to deny or revoke clearance, we can also accept a bond or other satisfactory surety proffered on behalf of the vessel. Local Coast Guard Captains of the Port (COTPs) determine whether a surety is satisfactory. In a 1995 **Federal Register** notice (60 FR 7927, Feb. 10, 1995), we asked the public to comment on this practice. We specifically requested input on 11 questions, including whether we need greater uniformity in surety format and content, and whether sureties should be the subject of new Coast Guard rules.

In light of the comments we received, we have decided to take further action only with respect to Letters of Undertaking (LOUs). LOUs are often proffered to and accepted by the Coast Guard as one form of satisfactory surety. An LOU is proffered on behalf of a vessel's owner, operator, or both (hereafter: "owner/operator"). Among other undertakings, the owner/operator promises to satisfy any adverse judgment, up to a stated maximum amount.

Discussion of Comments

We received four sets of comments in response to our 1995 notice. These comments will be entered in the docket for USCG–2004–17465 as supplemental materials.

Two commenters favored nationwide uniformity in the format and content of sureties. The Coast Guard wants to make the process of proffering and accepting sureties easier for industry and for us. Some degree of uniformity can help us attain that goal. However, we also want to preserve the COTP's authority to accept a proffered surety only if it fits the circumstances of a particular case.

Two commenters said existing practices can be reformed without requiring regulations. We agree that some reforms can be instituted without adding or amending regulations. The action we are taking with respect to LOUs does not require rulemaking.

One commenter said surety procedures should allow for different formats. With respect to LOUs, this commenter said the Coast Guard should develop minimum requirements which, if met by the profferor, would result in the LOU's acceptance. This commenter, and a second commenter, also recommended accepting a standard LOU developed on behalf of protection and indemnity ("P&I") clubs (maritime insurers) by the International Group of P&I Clubs. The second commenter cited an unreported U.S. district court opinion in support of this view. The Coast Guard agrees that a standard form provides useful guidance, but we do not think a single form can be accepted under all conditions. The LOU is in essence a contract. Therefore, it is subject to negotiation and agreement on its terms to fit the circumstances of the particular case. We note that in the past, when a standard form has been approved by P&I club managers, almost always this approval has been in the context of a suit asserting a vessel's *in rem* liability. However, the statutes authorizing the Coast Guard to request

denial or revocation of CBP clearance are not dependent on, limited in scope by, or equivalent to, the laws and procedures applicable to the assertion of an *in rem* claim against the vessel. Therefore, applying rules and practices developed with regard to asserting *in rem* claims against vessels under admiralty law is inappropriate and not required.

One commenter recommended that the Coast Guard use the International Group of P&I Clubs' membership information to determine from whom the Coast Guard will accept an LOU. This involves how the Coast Guard determines who can be an "approved" LOU issuer, what standards will be applied in that analysis, and development and maintenance of an "approved LOU issuer list" over time. These issues are under active Coast Guard consideration but are beyond the scope of this notice.

Two commenters said LOUs should be satisfactory to the Coast Guard whether the potential fine is civil or criminal in nature. The Coast Guard agrees that properly drafted sureties can be used in either civil or criminal cases. However, sureties for more serious or complex civil or criminal cases may need to address factors that do not arise in more common civil cases. The optional standard form LOU we are making available is intended for use only in the more common civil cases.

One commenter said a COTP should give "verbal authorization to release" a vessel before the paperwork for the surety is completed. The Coast Guard disagrees. Congress has provided statutory means for keeping vessels alleged to be involved in statutory violations in port until the public's interests are adequately secured, and we believe those means should be used unless and until the vessel provides satisfactory surety. An unenforceable verbal agreement does not provide such surety.

One commenter said that the Coast Guard's current procedures require a vessel to provide unnecessary and unreasonable double security, because in addition to the LOU itself, the vessel's owner must waive all objections to the Coast Guard's *in rem* jurisdiction over the vessel. The Coast Guard disagrees that the current procedures require the vessel interests to post unnecessary and unreasonable double security. The optional standard form LOU preserves the vessel interests' defenses, none of which is to be regarded as waived, except as stated in the LOU itself. The Coast Guard's procedures do not continue to subject the vessel to *in rem* seizure for the same violation, once an LOU or other satisfactory surety is posted, provided the LOU or other surety terms are satisfied.

One commenter said that, under 33 U.S.C. 1232, the clearance denial and revocation provisions of 46 U.S.C. Appendix, sec. 91, apply only if a vessel's owner has been given notice of the alleged violation and an opportunity for a hearing. This commenter said the Coast Guard oversteps the bounds of its police power by refusing port clearance to a vessel that has received no such notice and hearing. The Coast Guard disagrees. The statutes authorizing us to request the CBP's denial or revocation of a vessel's clearance do not require that request to be preceded by a hearing. No case has held that a pre-hearing request to withhold clearance violates due process. We note that, while not directly applicable, the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure do not require a pre-issuance hearing before a warrant of *in rem* or *quasi in rem* arrest is issued by a U.S. Magistrate Judge.

One commenter criticized the Coast Guard for trying to retain the right to arrest a vessel or other property of the vessel owner even after satisfactory surety is posted. This commenter contended that, in *in rem* proceedings against vessels, admiralty law principles preclude arresting the vessel or attaching any other property once an LOU has been accepted as surety. However, the statutes authorizing the Coast Guard to request denial or revocation of CBP clearance are not dependent on, or equivalent to, the assertion of an *in rem* claim against the vessel. Therefore, applying rules and practices developed with regard to asserting *in rem* claims against vessels under admiralty law is inappropriate and not required.

One commenter said that the Coast Guard's efforts to require an LOU correspondent to agree to act as a P&I club's agent for service of process are wrong because club correspondents are not agents of the club, and unnecessary because the International Group of P&I Clubs' standard LOU form issued in admiralty *in rem* actions against vessels contains an agreement to appear in any court of competent jurisdiction and file a claim on behalf of the owner of the vessel. The Coast Guard points out that the vessel's master is ordinarily the agent for the vessel owner and that appointment of a local individual or entity to receive correspondence and service of process on the owner's behalf and in the master's stead is a reasonable tradeoff for the Coast Guard's acquiescence in clearance for the departure from local waters of both the vessel and its master. The Coast Guard also notes that, since 1995, most LOUs issued by P&I clubs contain a provision similar to the one criticized by the commenter.

Standard Form Letter of Undertaking

Comments received in response to our 1995 notice confirm the Coast Guard's view that all sides will be benefited by having a standard form LOU that can be used nationwide for most civil penalty cases. Therefore, we are making available the optional standard form LOU appearing as an Appendix to this notice.

We do not think this form would be suitable for criminal cases or for civil cases where the penalty may be $500,000 or more. Serious or complex cases require other forms of surety. For a surety document to be satisfactory in a serious or complex case, it may need to include some or all of the following pledges or guarantees from the vessel owner, operator, or person in charge to:

(1) make vessel crew members and other employees available for legal proceedings, including making necessary travel arrangements to facilitate appearances;

(2) stipulate to certain incontrovertible facts, *e.g.* ownership and operation of the vessel or the authenticity of documents and things from the ship, without prejudice to its or their other rights and defenses;

(3) authorize acceptance of service of correspondence and legal papers;

(4) enter an appearance in Federal district court; or

(5) comply with instructions regarding payment of funds.

Use of the standard form LOU is entirely optional on the part of a prefferor. It can be proffered in any COTP zone. In addition, vessel representatives can still proffer a nonstandard LOU, a surety bond, or any other satisfactory form of surety. However, in each case, a COTP retains full authority to accept or reject a proffered surety, including a proffered standard form LOU, after consultation with the COTP's servicing legal office.

Dated: June 25, 2004.

T.H. Gilmour,

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

Appendix—Optional Standard form Letter of Undertaking

Secretary of Homeland Security
C/O Commanding Officer
U.S. Coast Guard
Marine Safety Office

[address]

Re: [name of vessel, on or about date, location] [applicable regulation or statute]

Dear Sir:

In consideration of the United States of America refraining from withholding the clearance required by 46 U.S.C. App. 91 of the [name of vessel], arresting the vessel or attaching any property belonging to the owners of the vessel in connection with claims and actions arising out of alleged violations described above occurring within the navigable waters and the Exclusive Economic Zone of the United States, and arising on or after [date of alleged violation] (hereafter referred to as the "alleged incident"), the undersigned [name of the bound party], hereby agrees:

1. That [name of agent or attorney-in-fact] as agent [or attorney in fact] for the owner/[name of bound party] and operator/[name of bound party] shall accept delivery of correspondence for the owner/[name of bound party] and operator/[name of bound party] and service of any process on behalf of the owner/[name of bound party] and operator/[name of bound party] in any case, action, administrative hearing, or proceeding related to or arising from civil penalties for violations as generally identified above; that delivery to the agent [or attorney-in-fact] constitutes effective notice and service on the owner/[name of bound party] and operator/[name of bound party];

2. To file, or cause to be filed, upon demand, a claim and/or appearance by the owner and/or operator of the vessel [name of vessel] in any action brought against either or both of them by the United States concerning the alleged violations, and to defend the vessel from any *in rem* claim asserted against it;

3. In the event a final judgment (after appeal if any) is entered, in favor of the United States against the vessel [name of vessel], or her owner or operator as a result of such action, to pay and satisfy said judgment, plus interest and costs, up to and not exceeding [maximum amount of civil penalty that may be assessed], or any lesser amount settled between the parties, provided said settlement has been made with the written approval of [name of bound party];

4. Upon written demand, to cause to be filed in said hearing or action, a bond in form and sufficiency of surety satisfactory to you, or to the court, sufficient in amount not to exceed [maximum amount of civil penalty that may be assessed], including interest and costs, to secure your claim against the owner and/or operator, and [name of vessel] in the aforesaid judicial action. In the event that the bond referred to in this paragraph is filed, the undersigned shall have no further obligation under Paragraph 3 above.

This letter is to be binding whether the [name of vessel] be lost or not lost, in port or not in port, and is given without prejudice to all rights or defenses which the [name of vessel] and/or her owner or operator may have, none of which is to be regarded as waived, with the exception that the owner and operator agree that delivery to the agent identified in Paragraph 1 above, of correspondence for the owner/[name of bound party] and operator/[name of bound party] will constitute effective notice to the owner/[name of bound party] and operator/[name of bound party], and that the owner/[name of bound party] and operator/[name of bound party] will not assert in any subsequent hearing or action any alleged defects in notice or service of process issued and served in accordance with this undertaking. This letter does not constitute an admission of liability by the vessel or its owner/[name of bound party] and operator/[name of bound party].

This letter is also written entirely without prejudice to any claims and rights the United States of America may have pursuant to any applicable certificate of financial responsibility ("COFR") pertaining to the vessel, none of which claims and rights is to be regarded as waived or discharged.

Owner/[name of bound party] warrants that it owns the vessel. Operator/[name of bound party] agrees that it may be considered an operator of the vessel under applicable United States law.

If no penalty is assessed, or no action is filed in the aforesaid court within a period of three (3) years from the date hereof, this letter shall become null and void. If the owner/[name of bound party] fails to appear as required by Paragraph ## or fails to waive objections to jurisdiction as required by Paragraph ##, then the undersigned association agrees to pay to the United States the full amount of this letter of undertaking.

It is understood and agreed that the execution of this letter by [name of law firm] on behalf of the undersigned [name of bound party underwriter or P&I club] shall not be construed as binding upon [name of law firm] but is binding only upon the undersigned [name of bound party underwriter or P&I club].

Sincerely,

[name of bound party underwriter or P&I club]

By: [firm]

[name of attorney]

As attorney-in-fact for the above limited purposes only per [telex, telefax, letter] authority from [name of bound party underwriter or P&I club] dated [date].

[FR Doc. 04–15112 Filed 7–1–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1523–DR]

Kentucky; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1523–DR), dated June 10, 2004, and related determinations.

DATES: *Effective:* **JUNE 24, 2004.**

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 10, 2004:

Hancock County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–15056 Filed 7–1–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1521–DR]

Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–1521–DR), dated June 8, 2004, and related determinations.

DATES: *Effective:* June 24, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 8, 2004:

The parish of Jefferson Davis for Individual Assistance.

The parish of Jefferson Davis is eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–15057 Filed 7–1–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–27]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Burruss, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Heather Ranson, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army:* Ms. Julie Jones-Conte, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310–0600; (703) 602–5180; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0084; *Interior:* Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219–0728; *Navy:* Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: June 24, 2004.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 7/2/04

Suitable/Available Properties

Buildings (by State)

California

Bldg. YLL–172
Yosemite National Park
Hemlock Bldg.
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior

Property Number: 61200420012
Status: Unutilized
Comment: 7020 sq. ft. motel, off-site use only

Bldg. YLL–174
Yosemite National Park
Alder Motel
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200420013
Status: Unutilized
Comment: 7020 sq. ft. motel, off-site use only

Bldg. 180
Yosemite National Park
Birch Motel
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200420014
Status: Unutilized
Comment: 3010 sq. ft. motel, off-site use only

Colorado

Bldgs. 25, 26, 27
Pueblo Chemical Depot
Pueblo CO 81006–
Landholding Agency: Army
Property Number: 21200420178
Status: Unutilized
Comment: 1311 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. 00127
Pueblo Chemical Depot
Pueblo CO 81006–
Landholding Agency: Army
Property Number: 21200420179
Status: Unutilized
Comment: 8067 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Georgia

Bldg. 00232
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420007
Status: Excess
Comment: 2436 sq. ft., most recent use—headquarters bldg., off-site use only

Bldg. P1450
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420027
Status: Excess
Comment: 100,230 sq. ft., most recent use—health clinic, off-site use only

Bldg. 4151
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420032
Status: Excess
Comment: 3169 sq. ft., most recent use—battle lab, off-site use only

Bldg. 4152
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420033
Status: Excess
Comment: 721 sq. ft., most recent use—battle lab, off-site use only

Bldg. 4476
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420034
Status: Excess
Comment: 3148 sq. ft., most recent use—veh. maint. shop, off-site use only

Bldg. 8771
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420044
Status: Excess
Comment: 972 sq. ft., most recent use—RH/TGT house, off-site use only

Bldg. 9028
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420049
Status: Excess
Comment: 54 sq. ft., most recent use—sew/wst wtr treatment, off-site use only

Bldg. 9029
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420050
Status: Excess
Comment: 7356 sq. ft., most recent use—heat plant bldg., off-site use only

Bldg. 11370
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420051
Status: Excess
Comment: 9602 sq. ft., most recent use—nco/enl bldg., off-site use only

Bldg. 00464
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200420180
Status: Unutilized
Comment: 2200 sq. ft., most recent use—recreation, off-site use only

Bldg. T924
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420194
Status: Excess
Comment: 9360 sq. ft., most recent use—warehouse, off-site use only

Maryland

Bldg. 00735
Aberdeen Proving Ground
Harford MD 21005–
Landholding Agency: Army
Property Number: 21200420052
Status: Unutilized
Comment: 1448 sq. ft., most recent use—ordnance bldg., off-site use only

Bldg. 00739
Aberdeen Proving Ground
Harford MD 21005–
Landholding Agency: Army
Property Number: 21200420053
Status: Unutilized
Comment: 3295 sq. ft., most recent use—storage, off-site use only

Bldg. 1145D
Aberdeen Proving Ground
Harford MD 21005–
Landholding Agency: Army
Property Number: 21200420054
Status: Unutilized
Comment: 898 sq. ft., most recent use—storage, off-site use only

Bldg. 3070A
Aberdeen Proving Ground
Harford MD 21005–
Landholding Agency: Army
Property Number: 21200420055
Status: Unutilized
Comment: 9 sq. ft., most recent use—heat plant, off-site use only

Bldg. E5026
Aberdeen Proving Ground
Harford MD 21005–
Landholding Agency: Army
Property Number: 21200420056
Status: Unutilized
Comment: 20,536 sq. ft., most recent use—storage, off-site use only

Bldg. 05261
Aberdeen Proving Ground
Harford MD 21005–
Landholding Agency: Army
Property Number: 21200420057
Status: Unutilized
Comment: 10067 sq. ft., most recent use—maintenance, off-site use only

Bldg. E5809
Aberdeen Proving Ground
Harford MD 21005–
Landholding Agency: Army
Property Number: 21200420058
Status: Unutilized
Comment: 69 sq. ft., most recent use—storage, off-site use only

Texas

Bldg. 04200
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200420065
Status: Unutilized
Comment: 2100 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Land (by State)

Ohio

GWEN Site #3
Township Rd. 196
Radnor Co: Delaware OH
Landholding Agency: GSA
Property Number: 54200420021
Status: Surplus
Comment: two tracts of farm land = 0.953 acre and 10.778 acres
GSA Number : 1–D–OH–825

Suitable/Unavailable Properties

Buildings (by State)

Colorado

Bldg. S6220
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200420175
Status: Unutilized
Comment: 12,361 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. S6285
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army

Property Number: 21200420176
Status: Unutilized
Comment: 19,478 sq. ft., most recent use—admin., off-site use only

Bldg. S6287
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200420177
Status: Unutilized
Comment: 10,076 sq. ft., presence of asbestos, most recent use—admin., off-site use only

District of Columbia

Bldg. 48A Annex
Fort McNair
Washington DC DC 20319–2058
Landholding Agency: Army
Property Number: 21200420001
Status: Excess
Comment: 3251 sq. ft., most recent use—admin., off-site use only

Georgia

Bldg. T201
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420002
Status: Excess
Comment: 1828 sq. ft., most recent use—credit union, off-site use only

Bldg. T202
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420003
Status: Excess
Comment: 5602 sq. ft., most recent use—headquarters bldg., off-site use only

Bldg. T222
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420004
Status: Excess
Comment: 2891 sq. ft., most recent use—headquarters bldg., off-site use only

Bldg. P223
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420005
Status: Excess
Comment: 6434 sq. ft., most recent use—headquarters bldg., off-site use only

Bldg. P224
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420006
Status: Excess
Comment: 6434 sq. ft., most recent use—enlisted bldg., off-site use only

Bldg. T234
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420008
Status: Excess
Comment: 2624 sq. ft., most recent use—admin., off-site use only

Bldg. T235
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420009
Status: Excess
Comment: 1842 sq. ft., most recent use—headquarters bldg., off-site use only

Bldg. T702
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420010
Status: Excess
Comment: 9190 sq. ft., most recent use—storage, off-site use only

Bldg. T703
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420011
Status: Excess
Comment: 9190 sq. ft., most recent use—storage, off-site use only

Bldg. T704
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420012
Status: Excess
Comment: 9190 sq. ft., most recent use—storage, off-site use only

Bldg. P813
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420013
Status: Excess
Comment: 43,055 sq. ft., most recent use—maint. hanger/Co Hq., off-site use only

Bldgs. S843, S844, S845
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420014
Status: Excess
Comment: 9383 sq. ft., most recent use—maint hanger, off-site use only

Bldg. P925
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420015
Status: Excess
Comment: 27,681 sq. ft., most recent use—fitness center, off-site use only

Bldg. S1227
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420016
Status: Excess
Comment: 2750 sq. ft., most recent use—admin., off-site use only

Bldg. S1248
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420017
Status: Excess
Comment: 1450 sq. ft., most recent use—police station, off-site use only

Bldg. S1251
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420018
Status: Excess
Comment: 3300 sq. ft., most recent use—police station, off-site use only

Bldg. T1254
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420019
Status: Excess
Comment: 4720 sq. ft., most recent use—transient UPH, off-site use only

Bldg. S1259
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420020
Status: Excess
Comment: 1750 sq. ft., most recent use—admin., off-site use only

Bldg. S1260
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420021
Status: Excess
Comment: 1750 sq.ft., most recent use—exchange service outlet, off-site use only

Bldg. P1275
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420022
Status: Excess
Comment: 138,032 sq. ft., most recent use—dining facility, off-site use only

Bldg. P1276
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420023
Status: Excess
Comment: 138,032 sq. ft., most recent use—headquarters bldg., off-site use only

Bldg. P1277
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420024
Status: Excess
Comment: 13,981 sq. ft., most recent use—barracks/dining, off-site use only

Bldg. T1412
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420025
Status: Excess
Comment: 9186 sq. ft., most recent use—warehouse, off-site use only

Bldg. T1413
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420026
Status: Excess
Comment: 21,483 sq. ft., most recent use—fitness center/warehouse, off-site use only

Bldg. P8058
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420028
Status: Excess
Comment: 1808 sq. ft., most recent use—control tower, off-site use only

Bldg. 8658
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420029
Status: Excess
Comment: 8470 sq. ft., most recent use—storage, off-site use only

Bldg. 8659
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420030
Status: Excess
Comment: 8470 sq. ft., most recent use—storage, off-site use only

Bldgs. 8675, 8676
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420031
Status: Excess
Comment: 4000 sq. ft., most recent use—ship/recv facility, off-site use only

Bldg. 5962–5966
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420035
Status: Excess
Comment: 2421 sq. ft., most recent use—igloo storage, off-site use only

Bldgs. 5967–5971
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420036
Status: Excess
Comment: 1813 sq. ft., most recent use—igloo storage, off-site use only

Bldgs. 5974–5977
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420037
Status: Excess
Comment: 400 sq. ft., most recent use—igloo storage, off-site use only

Bldg. 5978
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420038
Status: Excess
Comment: 1344 sq. ft., most recent use—igloo storage, off-site use only

Bldg. 5981
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420039
Status: Excess
Comment: 2028 sq. ft., most recent use—ammo storage, off-site use only

Bldgs. 5984–5988
Fort Benning
Ft. Benning Co: Chatachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420040
Status: Excess
Comment: 1816 sq. ft., most recent use—igloo storage, off-site use only

Bldg. 5993
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420041
Status: Excess
Comment: 960 sq. ft., most recent use—storage, off-site use only

Bldg. 5994
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420042
Status: Excess
Comment: 2016 sq. ft., most recent use—ammo storage, off-site use only

Bldg. 5995
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420043
Status: Excess
Comment: 114 sq. ft., most recent use—storage, off-site use only

Bldg. 9000
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420045
Status: Excess
Comment: 9313 sq. ft., most recent use—headquarters bldg., off-site use only

Bldgs. 9002, 9005
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420046
Status: Excess
Comment: 3555 sq. ft., most recent use—classroom, off-site use only

Bldg. 9025
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420047
Status: Excess
Comment: 3707 sq. ft., most recent use—headquarters bldg., off-site use only

Bldg. 9026
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420048
Status: Excess
Comment: 3867 sq. ft., most recent use—headquarters bldg., off-site use only

Bldg. T01
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420181
Status: Excess
Comment: 11,682 sq. ft., most recent use—admin., off-site use only

Bldg. T04
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420182
Status: Excess
Comment: 8292 sq. ft., most recent use—admin., off-site use only

Bldg. T05
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420183
Status: Excess
Comment: 7992 sq. ft., most recent use—admin., off-site use only

Bldg. T06
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420184
Status: Excess
Comment: 3305 sq. ft., most recent use—communication center, off-site use only

Bldg. T08
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420185
Status: Excess
Comment: 7670 sq. ft., most recent use—admin., off-site use only

Bldg. 00037
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420186
Status: Excess
Comment: 2833 sq. ft., most recent use—admin., off-site use only

Bldg. T55
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420187
Status: Excess
Comment: 6490 sq. ft., most recent use—admin., off-site use only

Bldg. T85
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420188
Status: Excess
Comment: 3283 sq. ft., most recent use—post chapel, off-site use only

Bldg. T131
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420189
Status: Excess
Comment: 4720 sq. ft., most recent use—admin., off-site use only

Bldg. T132
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420190
Status: Excess
Comment: 4720 sq. ft., most recent use—admin., off-site use only

Bldg. T157
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420191
Status: Excess
Comment: 1440 sq. ft., most recent use—education center, off-site use only

Bldg. 00916
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420192
Status: Excess

Comment: 642 sq. ft., most recent use—warehouse, off-site use only
Bldg. 00923
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420193
Status: Excess
Comment: 2436 sq. ft., most recent use—admin., off-site use only
Bldg. P925
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420195
Status: Excess
Comment: 3115 sq. ft., most recent use—motor repair shop, off-site use only
Bldg. 00926
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420196
Status: Excess
Comment: 357 sq. ft., most recent use—warehouse, off-site use only
Bldg. 01002
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420197
Status: Excess
Comment: 9267 sq. ft., most recent use—maintenance shop, off-site use only
Bldg. 01003
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420198
Status: Excess
Comment; 9267 sq. ft., most recent use—admin, off-site use only
Bldg. T1004
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420199
Status: Excess
Comment: 9272 sq. ft., most recent use—warehouse, off-site use only
Bldg. T1023
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420200
Status: Excess
Comment: 9267 sq. ft., most recent use—warehouse, off-site use only
Bldg. T1041
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420201
Status: Excess
Comment: 1626 sq. ft., most recent use—storage, off-site use only
Bldg. T1043
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420202
Status: Excess
Comment: 3825 sq. ft., most recent use—admin., off-site use only
Bldg. T1045
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420203
Status: Excess
Comment: 600 sq. ft., most recent use—shop, off-site use only
Bldg. T106
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420204
Status: Excess
Comment: 650 sq. ft., most recent use—heat plant bldg., off-site use only
Bldg. T1047
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420205
Status: Excess
Comment: 3000 sq. ft., most recent use—wash. platform/org., off-site use only
Bldg. T1049
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420206
Status: Excess
Comment: 768 sq. ft., most recent use—engine test facility, off-site use only
Bldg. T1050
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420207
Status: Excess
Comment: 3114 sq. ft., most recent use—shop, off-site use only
Bldg. T1051
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420208
Status: Excess
Comment: 12,205 sq. ft., most recent use—shop, off-site use only
Bldg. T1056
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420209
Status: Excess
Comment: 18,260 sq. ft., most recent use—shop, off-site use only
Bldg. T1057
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420210
Status: Excess
Comment: 18,260 sq. ft., most recent use—warehouse, off-site use only
Bldg. T1058
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420211
Status: Excess
Comment: 18,260 sq. ft., most recent use—storage, off-site use only
Bldg. T1062
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420212
Status: Excess
Comment: 5520 sq. ft., most recent use—general purpose, off-site use only
Bldg. T1069
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420213
Status: Excess
Comment: 14,096 sq. ft., most recent use—shop, off-site use only
Bldg. T1083
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420214
Status: Excess
Comment: 2816 sq .ft., most recent use—storage, off-site use only
Bldg. 19101
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420215
Status: Excess
Comment: 6773 sq. ft., most recent use—simulator bldg., off-site use only
Bldg. 19102
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420216
Status: Excess
Comment: 3250 sq. ft., most recent use—simulator bldg., off-site use only
Bldg. T19111
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420217
Status: Excess
Comment: 1440 sq. ft., most recent use—admin., off-site use only
Bldg. 19112
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420218
Status: Excess
Comment: 1344 sq. ft., most recent use—storage, off-site use only
Bldg. 19113
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420219
Status: Excess
Comment: 1440 sq. ft., most recent use—admin., off-site use only
Bldg. T19201
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420220
Status: Excess
Comment: 960 sq. ft., most recent use—physical fitness center, off-site use only
Bldg. 19202
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army

Property Number: 21200420221
Status: Excess
Comment: 1210 sq. ft., most recent use—community center, off-site use only

Bldg. 19204 thru 19207
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420222
Status: Excess
Comment: 960 sq. ft., most recent use—admin., off-site use only

Bldgs. 19208 thru 19211
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420223
Status: Excess
Comment: 1540 sq. ft., most recent use—general installation bldg., off-site use only

Bldg. 19212
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420224
Status: Excess
Comment: 1248 sq. ft., off-site use only

Bldg. 19213
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420225
Status: Excess
Comment: 1540 sq. ft., most recent use—general installation bldg., off-site use only

Bldg. 19214
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420226
Status: Excess
Comment: 1796 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19215
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420227
Status: Excess
Comment: 1948 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19216
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420228
Status: Excess
Comment: 1540 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19217
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420229
Status: Excess
Comment: 120 sq. ft., most recent use—nav aids bldg., off-site use only

Bldg. 19218
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420230
Status: Excess
Comment: 2925 sq. ft., most recent use—general installation bldg., off-site use only

Bldgs. 19219, 19220
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420231
Status: Excess
Comment: 1200 sq. ft., most recent use—general installation bldg., off-site use only

Bldg. 19223
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420232
Status: Excess
Comment: 6433 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19225
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420233
Status: Excess
Comment: 4936 sq. ft., most recent use—dining facility, off-site use only

Bldg. 19226
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420234
Status: Excess
Comment: 136 sq. ft., most recent use—general purpose installation bldg., off-site use only

Bldg. T19228
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420235
Status: Excess
Comment: 400 sq. ft., most recent use—admin., off-site use only

Bldg. 19229
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420236
Status: Excess
Comment: 640 sq. ft., most recent use—vehicle shed, off-site use only

Bldg. 19232
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420237
Status: Excess
Comment: 96 sq. ft., most recent use—general purpose installation, off-site use only

Bldg. 19233
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420238
Status: Excess
Comment: 48 sq. ft., most recent use—fire support, off-site use only

Bldg. 19236
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420239
Status: Excess
Comment: 1617 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19238
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420240
Status: Excess
Comment: 738 sq. ft., off-site use only

Missouri

Bldg. 5760
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200420059
Status: Unutilized
Comment: 2000 sq. ft., most recent use—classroom, off-site use only

Bldg. 5762
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200420060
Status: Unutilized
Comment: 104 sq. ft., off-site use only

Bldg. 5763
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200420061
Status: Unutilized
Comment: 120 sq. ft., most recent use—obs. tower, off-site use only

Bldg. 5765
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200420062
Status: Unutilized
Comment: 800 sq. ft., most recent use—support bldg., off-site use only

Wisconsin

Bldg. 01553
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 21200420063
Status: Unutilized
Comment: 1998 sq. ft., most recent use—service station, off-site use only

Bldg. 01563
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 21200420064
Status: Unutilized
Comment: 120 sq. ft., most recent use—transmitter bldg., off-site use only

Unsuitable Properties

Buildings (by State)

California

Bldg. 3410
Yosemite National Park
Vogelsang
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200420008
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 06240 thru 06245

Yosemite National Park
Tamarack Flat
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200420009
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4702
Yosemite National Park
Mariposa Grove
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200420010
Status: Unutilized
Reason: Extensive deterioration

Bldg./Lodge
Yosemite National Park
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200420011
Status: Unutilized
Reason: Extensive deterioration

Bldg. 89
Naval Base
San Diego Co: CA –
Landholding Agency: Navy
Property Number: 77200420059
Status: Excess
Reason: Extensive deterioration

Bldg. 128
Naval Base
San Diego Co: CA –
Landholding Agency: Navy
Property Number: 77200420060
Status: Excess
Reason: Extensive deterioration

Bldg. 249
Naval Base
San Diego Co: CA –
Landholding Agency: Navy
Property Number: 77200420061
Status: Excess
Reason: Extensive deterioration

Bldg. 250
Naval Base
San Diego Co: CA –
Landholding Agency: Navy
Property Number: 77200420062
Status: Excess
Reason: Extensive deterioration

Bldg. 357
Naval Base
San Diego Co: CA –
Landholding Agency: Navy
Property Number: 77200420063
Status: Excess
Reason: Extensive deterioration

Bldg. 467
Naval Base
San Diego Co: CA –
Landholding Agency: Navy
Property Number: 77200420064
Status: Excess
Reason: Extensive deterioration

Bldg. 469
Naval Base
San Diego Co: CA –
Landholding Agency: Navy
Property Number: 77200420065
Status: Excess
Reason: Extensive deterioration

Georgia

17 Bldgs.
Naval Air Station
Marietta Co: Cobb GA 30060–
Location: 50–52, 61–61, 55–59, 66–69, 86–87, 206
Landholding Agency: Navy
Property Number: 77200420066
Status: Excess
Reasons: Within 2,000 ft. of flammable or explosive material
Secured Area

Land (by State)

Alabama

Stockpile Storage Site
Hamilton Blvd.
Republished
Theodore AL 36582–
Landholding Agency: GSA
Property Number: 54200420003
Status: Excess
Within 2,000 ft. of flammable or explosive material
GSA Number: 4–G–AL–0772

[FR Doc. 04–14723 Filed 7–1–04; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Recovery Plan for the Pecos Sunflower (*Helianthus paradoxus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft Recovery Plan for the Pecos sunflower (*Helianthus paradoxus*). The Pecos sunflower is a wetland annual plant that grows on wet, alkaline soils at spring seeps, wet meadows and pond margins. It has six widely spaced populations in west-central and eastern New Mexico and west Texas. The Service solicits review and comment from the public on this draft plan.

DATES: The comment period for this proposal closes on August 2, 2004. Comments on the draft Recovery Plan must be received by the closing date.

ADDRESSES: Persons wishing to review the draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna, NE., Albuquerque, New Mexico, 87113. If you wish to comment, you may submit your comments and materials concerning this draft Recovery Plan to the Field Supervisor at the address above.

FOR FURTHER INFORMATION CONTACT: Rawles Williams, New Mexico Ecological Services Field Office, at the above address; telephone 505/346–2525, facsimile 505/346–2542.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Recovery Plan for the Pecos sunflower. The species was listed as threatened on October 20, 1999, under the Endangered Species Act of 1973.

The threats facing the survival and recovery of this species are the loss and alteration of its wetland habitat due to aquifer depletions, diversions of surface water, and filling wetlands for conversion to dry land; competition from non-native plant species, including Russian olive and saltcedar; excessive livestock grazing; and, highway maintenance and mowing. The draft Recovery Plan includes scientific information about the species and provides objectives and actions needed to delist the species. Recovery activities designed to achieve these objectives include identifying and securing core conservation habitats essential for the long-term survival of this species, continuing life history, population, and habitat studies, ensuring compliance with existing regulations, and promoting opportunities for voluntary conservation of the species.

The draft Recovery Plan is being submitted for technical and agency

review. After consideration of comments received during the review period, the Recovery Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the draft Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the final Recovery Plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 15, 2004.

Dom Ciccone,

Acting Regional Director, Region 2.

[FR Doc. 04–15063 Filed 7–1–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take of the Houston Toad by Aqua Water Supply Corporation, Lower Colorado River Authority, Bluebonnet Electric Cooperative, Inc., and Austin Energy

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Aqua Water Supply Corporation, Lower Colorado River Authority, Bluebonnet Electric Cooperative, Inc., and Austin Energy (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (TE–078366–0) pursuant to Section 10(a) of the Endangered Species Act of 1973, as amended (Act). The requested permit, which is for a period of 30 years, would authorize incidental take of the endangered Houston toad (*Bufo houstonensis*) during the routine maintenance and repair of existing facilities and installation of new facilities within the 142,526-acre covered area of Bastrop and Lee counties, Texas.

The Service and applicant have prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species and a decision under the National Environmental Policy Act (NEPA) will not be made until at least 60 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and NEP regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before August 31, 2004.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by written or telephone request to Scott Rowin, U.S. Fish and Wildlife Service, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request or by appointment only during normal business hours (8:00 am to 4:30 pm) at the U.S. Fish and Wildlife Service Office, Austin, Texas. Data or comments concerning the application and EA/HCP should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758. Please refer to permit number TE–078366–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Scott Rowin at the U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057).

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicants: Aqua Water Supply Corporation, Lower Colorado River Authority, Bluebonnet Electric Cooperative, Inc., and Austin Energy have developed an HCP that specifies what steps the applicants will take to minimize and mitigate impacts to the Houston toad during routine activities including, but not limited to, maintenance, repair, upgrades, and new installation of linear and fixed foundation facilities. The Applicants cooperatively developed this alternative in order to provide tangible conservation measures for the Houston toad and wildlife in general, provide a reliable source of funding available for additional conservation initiatives, provide realistic and immediate solutions to business needs, and continue to provide timely and affordable services to local residents.

Issuance of the permit would authorize activities described above on approximately 6,792 acres of the 142,526-acre covered area. Facilities already in existence cover approximately 4,241.2 of the 6,792 acres. Coverage of the remaining 2,550.4 acres will result from the installation of new facilities. Many existing facilities (on approximately 2,240.8 acres) occur within right-of-ways (ROW) (primarily road ROWs) managed and maintained by other entities. The Applicants estimate that 2,023.5 acres of the anticipated future facilities would be placed within similar ROWs. The remaining 526.9 acres of new facilities would likely be constructed outside of existing roadway ROWs and throughout the covered area. Installation of new facilities would be accomplished gradually over the life of the permit.

Both the Service and Applicants agree that not all portions of the covered area contain suitable Houston toad habitat, and not all covered activities would result in take of the Houston toad. However, in an effort to efficiently and effectively allow normal business practices to continue, and to compensate for any impacts to the Houston toad, the Applicants propose to mitigate for all activities performed within the covered area as described in Sections 6.2.1.2, 6.2.1.3, and 6.2.2 of the EA/HCP, which would provide mitigation fees throughout the life of the permit and thus provide a substantial and dependable source of funds for toad conservation; an expected $1,866,354 over the life of the permit. The Applicants proposed this mitigation strategy so that the cost of mitigation could be spread over the life of the permit. Additionally, under this strategy the costs associated with mitigation could be incorporated into long-term budgeting and planning. Mitigation would occur regardless of whether the activities described above would result in take of the Houston toad.

Susan MacMullin,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 04–15069 Filed 7–1–04; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Prepare Combined Comprehensive Conservation Plan and Associated Environmental Document for 39 Easement Refuges Located In North Dakota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The U.S Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan and associated environmental documents for the following 39 easement national wildlife refuges (NWR): Half Way Lake NWR, Stutsman County; Ardoch NWR, Walsh County; Buffalo Lake NWR, Pierce County; Hobart Lake NWR, Barnes County; Stoney Slough NWR, Barnes County; Tomahawk NWR, Barnes County; Camp Lake NWR, McLean County; Hiddenwood NWR, McLean County; Lake Otis NWR, McLean County; Lost Lake NWR, McLean County; Cottonwood NWR, McHenry County; Wintering River NWR, McHenry County; Johnson Lake NWR, Eddy County; Brumba NWR, Towner County; Rock Lake NWR, Towner County; Snyder Lake NWR, Towner County; Sibley Lake NWR, Griggs County; Little Goose NWR, Grand Forks County; Canfield Lake NWR, Burleigh County; Lambs Lake NWR, Nelson County; Rose Lake NWR, Nelson County; Lake Patricia NWR, Morton County; Pretty Rock NWR, Grant County; Sheyenne Lake NWR, Sheridan County; Silver Lake NWR, Ramsey/Benson Counties; Pleasant Lake NWR, Benson County; Wood Lake NWR, Benson County; Hutchinson Lake NWR, Kidder County; Lake George NWR, Kidder County; Lords Lake NWR, Bottineau/Rolette Counties; Rabb Lake NWR, Rolette County; School Section Lake NWR, Rolette County; Willow Lake NWR, Rolette County; Bone Hill NWR, LaMoure County; Dakota Lake NWR, Dickey County; Maple River NWR, Dickey County; Appert Lake NWR, Emmons County; Springwater NWR, Emmons County; and Sunburst Lake NWR, Emmons County. These 39 refuges are located primarily throughout eastern North Dakota and are individually managed by Arrowwood, Audubon, Devils Lake, J. Clark Salyer, Kulm, and Long Lake Complex's. The Service is issuing this notice in compliance with its policy to advise other organizations and the public of its intentions and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: Written comments should be received by September 30, 2004.

ADDRESSES: Comments and requests for more information should be sent to: Laura King, Planning Team Leader, and P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486. The fax number is 303/236–4792 and e-mail is *laura_king@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Laura King, Planning Team Leader, P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486. The fax number is 303/236–4792 and e-mail is *laura_king@fws.gov.*

SUPPLEMENTARY INFORMATION: The Service has initiated comprehensive conservation planning for the above listed 39 national wildlife refuges for the conservation and enhancement of their natural resources. These Refuges are unique in that they are primarily comprised of private lands covered by refuge and flowage easements acquired for $1.00 in the mid-1930s as water conservation and wildlife preservation projects. In the late 1930s, 31 of these easement lands were later combined and designated as national wildlife refuges by President Franklin D. Roosevelt through Executive Order for the purpose of "* * * refuge[s] and breeding ground[s] for migratory birds and other wildlife * * *." Seven other refuges were established in 1948, under the authority of the precursor to the Fish and Wildlife Coordination Act, while the final refuge, Lake Otis, was establish in the early 1970s as "* * * an inviolate sanctuary for migratory birds. * * *" Combined, these refuges encompass 46,935 acres, ranging in size from 160 acres (Half Way Lake) to 5,506 acres (Rock Lake).

During the comprehensive planning process, management goals, objectives, and strategies will be developed to carry out the purposes of the refuges and to comply with laws and policies governing refuge management and public use of refuges. As these are private lands, most of these refuges are primarily closed to public uses. Opportunities for public input will be provided at various public meetings planned for the summer of 2004. Exact dates and times for these public meetings are yet to be determined, but will be announced via local media.

All information provided voluntarily by mail, phone, or at public meetings (*e.g.*, names, addresses, letters of comment, input recorded during meetings) becomes part of the official public record. If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of such information.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, Executive Order 12996, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations.

Dated: May 19, 2004.

John A. Blankenship,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 04–15064 Filed 7–1–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Thirteenth Regular Meeting; Provisional Agenda; Announcement of Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The United States, as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), will attend the thirteenth regular meeting of the Conference of the Parties to CITES (COP13) in Bangkok, Thailand, October 2–14, 2004. Currently, the United States is developing its negotiating positions on proposed resolutions, proposed decisions, proposed amendments to the CITES Appendices (species proposals), and other agenda items that were submitted by other Party countries and the CITES Secretariat for consideration at COP13. With this notice we announce the provisional agenda for COP13, solicit your comments on the items on the provisional agenda, and announce a public meeting to discuss the items on the provisional agenda.

DATES: The public meeting will be held on August 12, 2004, at 1:30 p.m. In developing the U.S. negotiating positions on proposed resolutions, proposed decisions, species proposals, and other agenda items submitted by other Party countries and the CITES Secretariat for consideration at COP13, we will consider written information and comments you submit if we receive them by August 31, 2004.

ADDRESSES:

Public Meeting

The public meeting will be held in the Rachel Carson Room, in the Department of the Interior at 18th and C Streets, NW., Washington, DC. Directions to the building can be obtained by contacting the Division of Management Authority (*see* **FOR FURTHER INFORMATION CONTACT**, below).

Comment Submission

Comments pertaining to proposed resolutions, proposed decisions, and agenda items other than those related to species proposals should be sent to the Division of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 700; Arlington, VA 22203; or via E-mail at: *citescop13@fws.gov*; or via fax at: 703–358–2298. Comments pertaining to species proposals should be sent to the Division of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 750; Arlington, VA 22203; or via E-mail at: *scientificauthority@fws.gov*; or via fax at: 703–358–2276. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at either the Division of Management Authority or the Division of Scientific Authority.

FOR FURTHER INFORMATION CONTACT: For information pertaining to resolutions, decisions, and agenda items other than those related to species proposals: Peter O. Thomas, Chief, Division of Management Authority; phone: 703–358–2095; fax: 703–358–2298; E-mail: *citescop13@fws.gov*. For information pertaining to species proposals: Robert R. Gabel, Chief, Division of Scientific Authority; phone: 703–358–1708; fax: 703–358–2276; E-mail: *scientificauthority@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may be threatened with extinction due to trade. These species are listed in Appendices to CITES, which are available on the CITES Secretariat's Web site at *http://www.cites.org/eng/append/index.shtml*. Currently, 166 countries, including the United States, are Parties to CITES. The Convention calls for biennial meetings of the Conference of the Parties, which reviews its implementation, makes provisions enabling the CITES Secretariat in Switzerland to carry out its functions, considers amendments to the list of species in Appendices I and II, considers reports presented by the Secretariat, and makes recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, resolutions, decisions, and/or agenda items for consideration by all the Parties.

This is our third in a series of **Federal Register** notices that, together with announced public meetings, provide you with an opportunity to participate in the development of the U.S. negotiating positions for the thirteenth regular meeting of the Conference of the Parties to CITES (COP13). We published our first such **Federal Register** notice on June 19, 2003 (68 FR 36831), and with it we requested information and recommendations on species proposals, proposed resolutions, proposed decisions, and other agenda items for the United States to consider submitting for consideration at COP13. We published our second such **Federal Register** notice on January 12, 2004 (69 FR 1757), and with it we requested information and recommendations on species proposals, proposed resolutions, proposed decisions, and other agenda items that the United States was considering submitting for consideration at COP13. You may obtain information on the above **Federal Register** notices from the following sources: for information on proposed resolutions, proposed decisions, and agenda items other than those related to species proposals, contact the Division of Management Authority at the above address; and for information on species proposals, contact the Division of Scientific Authority at the above address. On May 5, 2004, the United States submitted to the CITES Secretariat, for consideration at COP13, its species proposals, proposed resolutions, proposed decisions, and other agenda items. These documents are available on our Web site at: *http://international.fws.gov/cop%2013/cop13.htm*. You may locate our regulations governing this public process in 50 CFR 23.31–23.39.

COP13 is scheduled to be held in Bangkok, Thailand, October 2–14, 2004.

Announcement of Provisional Agenda for COP13

The provisional agenda for COP13 is currently available on the CITES Secretariat's Web site at *http://www.cites.org/eng/cop/13/docs/index.shtml*. The working documents associated with the items on the provisional agenda, such as proposed resolutions, proposed decisions, and discussion documents, are also available on the Secretariat's Web site. To view the working document associated with a particular agenda item, access the provisional agenda at the above Web site, locate the particular agenda item, and click on the document link for that agenda item in the column entitled "Document." Finally, the species proposals that will be considered on the agenda are available on the Secretariat's Web site at *http://www.cites.org/eng/cop/13/props/index.shtml*. We look forward to receiving your comments on the items on the provisional agenda.

Announcement of Public Meeting

We announce that we will hold a public meeting to discuss with you the items on the provisional agenda for COP13. The public meeting will be held on August 12, 2004, from 1:30 p.m. to 4:30 p.m. in the Rachel Carson Room of the Department of the Interior at 18th and C Streets, NW., Washington, DC. You can obtain directions to the building by contacting the Division of Management Authority (see **FOR FURTHER INFORMATION CONTACT**, above). The Rachel Carson Room is accessible to the handicapped. Persons planning to attend the meeting who require interpretation for the hearing impaired should notify the Division of Management Authority as soon as possible. All persons planning to attend the meeting will be required to present photo identification when entering the building, and must enter through the C Street entrance.

Future Actions

Through an additional notice and Website posting in advance of COP13, we will inform you about tentative U.S. negotiating positions on proposed resolutions, proposed decisions, species proposals, and other agenda items that were submitted by other Party countries and the CITES Secretariat for consideration at COP13.

Author: The primary author of this notice is Mark Albert, Division of Management Authority; under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 9, 2004.

Marshall P. Jones, Jr.,

Deputy Director.

[FR Doc. 04–15073 Filed 7–1–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MTM 56312]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On behalf of the U.S. Department of Agriculture, Forest Service, the Secretary of the Interior proposes to extend Public Land Order No. 6560 for an additional 20-year period. The order withdrew National Forest System land from surface entry and mining to protect the Wisdom Administrative Site. This notice also gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by August 2, 2004.

ADDRESSES: Comments and meeting requests must be sent to the Montana State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107–6800. Complimentary copies may be sent to the Regional Forester, Region 1, P.O. Box 7669, Missoula, Montana 59807.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, 406–896–5052.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture, Forest Service, has filed an application to extend Public Land Order No. 6560 (49 FR 32068, August 10, 1984) for an additional 20-year period. This withdrawal was made to protect the Wisdom Administrative Site and will expire August 5, 2004. An extension, if approved, would continue the withdrawal of National Forest System land from settlement, sale, location, or entry under the general land laws, including the United States mining laws, subject to valid existing rights, and would continue protection of facilities and capital improvements on the following-described land:

T. 2 S., R. 15 W.,
Sec. 34: a parcel of land located in the SW¼SW¼ and NW¼SW¼ (Tract A of Certificate of Survey No. 369).
T. 3 S., R. 15 W.,
Sec. 3: a parcel of land located in lot 4 (Tract B of Certificate of Survey No. 369).
The area described contains 59.99 acres in Beaverhead County.

The Forest Service proposes to extend the withdrawal an additional 20 years. The extension of the withdrawal would protect the facilities and capital improvements within the Wisdom Administrative Site.

In accordance with section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the subject withdrawal may be extended if the Secretary of the Interior determines that the purpose for which the withdrawal was first made requires the extension and then, if so, only for a period not to exceed the duration of the original withdrawal period.

All persons who wish to submit comments, suggestions, objections, or requests for public meetings in connection with the proposed withdrawal extension may present their views in writing to the Montana State Director of the Bureau of Land Management until August 2, 2004.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed extension must submit a written request to the Montana State Director, Bureau of Land Management by August 2, 2004. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and in at least one local newspaper 30 days before the scheduled date of the meeting.

Comments, including names and street addresses of commenters, will be available for public review at the Bureau of Land Management Montana State Office, 5001 Southgate Drive, Billings, Montana, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. BLM will not consider anonymous comments. However, individual respondents may request anonymity. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such request will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Dated: April 22, 2004.

Chun Wong,

Acting Deputy State Director, Division of Resources.

[FR Doc. 04–15111 Filed 7–1–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–5870–EU]

Notice of Realty Action: Competitive Sale of Public Lands in Elko and Lander Counties, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell federally owned parcels of land in Elko and Lander Counties, Nevada, aggregating approximately 648.56 acres. All sales will be conducted on September 15, 2004, in accordance with competitive bidding procedures.

DATES: Comments regarding the proposed sale must be received by BLM on or before August 16, 2004. Sealed bids must be received by BLM not later than 4:30 p.m., P.d.t., September 8, 2004. Five parcels of land proposed for sale are to be put up for purchase and sale, at public auction, beginning at 10 a.m., P.d.t., September 15, 2004. Registration for oral bidding will begin at 8 a.m., P.d.t., September 15, 2004. The public auction will begin at 10 a.m., P.d.t., September 15, 2004. Other deadline dates for the receipt of payments 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, Elko Field Office, Bureau of Land Management, 3900 East Idaho St., Elko, NV 89801.

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 Elko Field Office.

The address for oral bidding registration and for where the public auction will be held is: Bureau of Land Management, Elko Field Office, 3900 East Idaho St., Elko, NV 89801.

The auction will take place in the Elko Field Office Main Conference Room.

FOR FURTHER INFORMATION CONTACT: You may contact Jason Allen, Realty Specialist, at (775) 753–0235 or by e-mail at *Jason_Allen@nv.blm.gov*. You may also call (775) 753–0200 and ask to have your call directed to a member of the Lands Team.

SUPPLEMENTARY INFORMATION: The following lands have been authorized and designated for disposal under the Elko Resource Management Plan Record

of Decision (March 1987), this land use plan being in effect on July 25, 2000, for purposes of the Federal Land Transition Facilitation Act of 2000 (FLTFA) (43 U.S.C. 2301, 2304). These lands are proposed to be put up for purchase and sale by competitive auction on September 15, 2004, at an oral auction to be held in accordance with the applicable provisions of section 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 an appraisal, and acceptance by the authorized officer.

Lands Proposed for Sale

Mount Diablo Meridian, Nevada

T. 37 N., R. 60 E.,
Sec. 30, SE¼NE¼.
T. 35 N., R. 57 E.,
Sec. 4, lots 2, 3 and 4, N½SW¼NE¼, SW¼SW¼NE¼, N½SE¼SW¼NE¼, S½NW¼.
T. 34 N., R. 55 E.,
Sec. 24, W½NE¼.
T. 34 N., R. 44 E.,
Sec. 36, NE¼.
T. 32 N., R. 44 E.,
Sec. 2, lots 3 and 4, SE¼NW¼.

Consisting of five parcels containing approximately 648.56 acres.

Terms and Conditions of Sale

The terms and conditions applicable to this sale are as follows:

All parcels are sold and will be conveyed subject to the following:

a. All minerals are reserved to the United States, its' permittees, licensees and lessees, together with the right to prospect for, mine and remove the minerals under applicable law and such regulations as the Secretary of the Interior may prescribe, along with all necessary access and exit rights.

b. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

c. Valid existing rights including, but not limited to, rights-of-way for roads, public utilities and flood control improvements. 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. to 4:30 p.m., P.d.t., Monday through Friday, at the Elko Field Office.

2. 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)).

3. 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 patentee's 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 substance(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 or 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.

4. Maps delineating the individual proposed sale parcels are available for public review at the BLM Elko Field Office. Current appraisals for each parcel will be available for public review at the Elko Field Office on or about July 16, 2004.

5. (a) Bids may be received by sealed bid for all parcels , or orally for all parcels at auction. All sealed bids must be received at the Elko Field Office, no later than 4:30 p.m., P.d.t., September 8, 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 not be less than the federally approved fair market value and a separate bid must be submitted for each parcel. (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 fair market value, as determined by the authorized officer.

6. All parcels will be put up for competitive sale by oral auction beginning at 10 a.m., P.d.t., September 15, 2004, in the BLM Elko Field Office Main Conference Room, 3900 East Idaho Street, Elko, Nevada. Interested parties who will not be bidding are not required to register. 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.

7. All oral bidders are required to register. Registration for oral bidding will begin at 8 a.m., P.d.t., on the day of the sale and will end at 10 a.m. P.d.t. You may pre-register by mail or fax by completing the form located in the sale folder and also available at the BLM Elko Field Office.

8. On the day of the sale, pre-registered bidders may present a photo identification card and receive a bidder number. All other bidders will be asked for additional information along with your photo identification card. Upon completion of registration you will be given a bidder number. If you are a successful bidder, you will be asked for a 20 percent deposit of the bid to be paid, before the close of business of the sale date.

9. 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 to a BLM Collection Officer by 4:30 p.m., P.d.t., on the day of the sale either in the form of cash or a personal check, bank draft, cashier's check, money order or any combination thereof, made payable to the order of the Bureau of Land Management, for not less than 20 percent of the amount of the successful bid. If not paid by the close of the

auction, funds for the full amount of the deposit must be delivered no later than 4:30 p.m., P.d.t., the day of the sale, to one of the BLM Collection Officers at the Elko Field Office.

10. 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 order of the Bureau of Land Management. Personal checks will not be accepted for the remaining balance. 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.

11. Oral bids will be considered only if received at the place of sale and made at least for the fair market value as determined by the Authorized Officer.

12. 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 not to be in the public interest.

13. 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 may be put up for sale at future auctions without additional legal notice. Upon publication of this notice and until completion of the sale, the BLM is no longer accepting land use applications affecting any parcel identified for sale. However, land use applications may be considered after completion of the sale for parcels that are not sold through the sealed or oral bidding procedures, provided the authorization will not adversely affect the marketability or value of the parcel.

14. 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. *See* 43 CFR 2711.2. Certification of qualification, including U.S. citizenship status must accompany the bid deposit.

15. 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 BLM 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.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, CERCLA and other environmental documents is available for review at the BLM Elko Field Office, or by calling (775) 753–0200. This information will also be available on the Internet at *http://www.nv.blm.gov/elko/nepa.htm* and click on Land Sales.

Public Comments

The general public and interested parties may submit comments regarding the proposed sale and purchase to the Field Manager, BLM Elko Field Office. Comments must be received by the BLM on or before August 16, 2004. 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 the Interior.

BLM will not consider anonymous comments. However, individual respondents may request anonymity. If you wish to withhold your name and address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. A request for anonymity will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Authority: 43 CFR 2711.1–2(a) and (c).

Helen Hankins,

Elko Field Office Manager.

[FR Doc. 04–15198 Filed 7–1–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: This is notice of a meeting of the Native American Graves Protection and Repatriation Review Committee. The next Review Committee meeting is a public teleconference on July 19, 2004, to discuss agenda items for a Review Committee meeting tentatively scheduled for September 18–19, 2004, in Washington, DC, and to elect a Review Committee chair, and to receive presentations and statements by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public. Notification of this meeting may appear in the **Federal Register** less than 15 calendar days prior to the meeting date due to difficulties in coordinating Review Committee members' schedules.

DATES: The meeting via teleconference is on July 19, 2004, from 2 p.m. until approximately 5 p.m. e.d.s.t.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, telephone (202) 354–2206, facsimile (202) 371–5197, e-mail *tim_mckeown@nps.gov*.

SUPPLEMENTARY INFORMATION: Authority. Native American Graves Protection and Repatriation Act (NAGPRA, 25 U.S.C. 3001 *et seq.*), and Federal Advisory Committee Act (FACA, 5 U.S.C. Appendix).

General Information. The Review Committee was established by NAGPRA. Review Committee members are appointed by the Secretary of the Interior. The Review Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains and recommending actions for developing a process for disposition of such remains; consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the Review Committee affecting such tribes or organizations; consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and making

recommendations regarding future care of repatriated cultural items. The Review Committee's work is completed during meetings that are open to the public.

Transcripts of Review Committee meetings are available approximately 8 weeks after each meeting at the National NAGPRA program office, 1201 Eye Street NW, Washington, DC. To request electronic copies of meeting transcripts, send an e-mail message to *nagpra-info@nps.gov*. Information about NAGPRA, the Review Committee, and Review Committee meetings is available at the National NAGPRA Website, *http://www.cr.nps.gov/nagpra;* for the Review Committee's meeting protocol, select "Review Committee," then select "Procedures."

Meeting time and remote locations. The teleconference meeting will begin at 2 p.m. and end at approximately 5 p.m. e.d.s.t. Remote locations for public participation in the teleconference have been established at the following National Park Service offices. Participants will need proper identification and should allow extra time to pass through security at each location.

Washington, DC: Headquarters Office, 1201 Eye Street NW, 7th floor, room 90. From 2 p.m. to 5 p.m. e.d.s.t. Contact Robin Coates, (202) 354–2201.

Boston, MA: Northeast Regional Office, 15 State Street, 4th floor conference room. Enter through the Visitors Center for Boston National Historical Park. From 2 p.m. to 5 p.m. e.d.s.t. Contact Chuck Smythe, (617) 223–5014.

Atlanta, GA: Southeast Regional Office, 100 Alabama St, SW, 1924 Building, 6th floor training room. From 2 p.m. to 5 p.m. e.d.s.t. Contact J. Anthony Paredes, (404) 562–3117.

St. Paul, MN: Mississippi National River and Recreation Area, 111 East Kellogg Blvd, room 212. From 1 p.m. to 4 p.m. c.d.s.t. Contact Michael J. Evans, (651) 290–4165.

Denver, CO: Intermountain Regional Office, 12795 West Alameda Parkway. From noon to 3 p.m. m.d.s.t. Contact Cyd Martin, (303) 969–2868.

Santa Fe, NM: Intermountain Regional Office—Santa Fe, 2968 Rodeo Park Drive West, 2nd floor room 2080. From noon to 3 p.m. m.d.s.t. Contact Ed Lee Natay, (505) 988–6896.

Oakland, GA: Pacific West Regional Office, 111 Jackson Street, 6th floor conference room. From 11 a.m. to 2 p.m. p.d.s.t. Contact Roger Kelly, (510) 817–1400.

Seattle, WA: Pacific West Regional Office, 909 First Avenue, room 560. From 11 a.m. to 2 p.m. p.d.s.t. Contact Fred York, (206) 220–4148.

Anchorage, AK: Alaska Regional Office, remote site will be in the executive dining room, Federal Building, 222 W. 7th Avenue. From 10 a.m. to 1 p.m. a.d.s.t. Contact Janet Cohen, (907) 644–3462.

Honolulu, HI: Pacific Island Support Office, 300 Ala Moana Boulevard. From 8 a.m. to 11 a.m. h.s.t. Contact Melia Lane-Kamahale, (808) 541–2693, extension 729.

Agenda for the teleconference meeting. The agenda for the July 19, 2004, meeting includes a discussion of agenda items for the Review Committee meeting tentatively scheduled for September 18–19, 2004, in Washington, DC; election of a Review Committee chair; and presentations and statements by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public. Persons may submit written statements for the Review Committee's consideration to the Designated Federal Officer, facsimile (202) 371–5197, e-mail *tim_mckeown@nps.gov*.

Dated: June 29, 2004

C. Timothy McKeown,

Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 04–15163 Filed 7–1–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT–DES–04–3]

Platte River Recovery Implementation Program (Program)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public hearings on a draft environmental impact statement (DEIS).

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation and the U.S. Fish and Wildlife Service have prepared a DEIS for the Platte River Recovery Implementation Program. At the public hearings, individuals will have the opportunity to present written or short oral testimony on the environmental impacts of the Program. All testimony will be addressed in the Final Environmental Impact Statement (EIS) as part of the comment and response process.

DATES: The following public hearings are scheduled from 7 to 10 p.m.:

- July 26, 2004, Saratoga, Wyoming
- July 27, 2004, Casper, Wyoming
- July 28, 2004, Torrington, Wyoming
- July 29, 2004, Gering, Nebraska
- August 2, 2004, Kearney, Nebraska
- August 3, 2004, Lincoln, Nebraska
- August 4, 2004, Sterling, Colorado
- August 9, 2004, Berthoud, Colorado
- August 10, Denver, Colorado

There will be an additional public hearing from 3 to 6 p.m.:

- August 2, 2004, Kearney, Nebraska

Written comments can also be sent to the Platte River EIS Office until August 20, 2004.

ADDRESSES: The hearings will be held at:

- Riviera Lodge, 104 East Saratoga Street, Saratoga, Wyoming;
- Holiday Inn, 300 West F Street, Casper, Wyoming;
- Holiday Inn, 1700 E. Valley Road, Torrington, Wyoming;
- Gering Civic Center, 1050 M Street, Gering, Nebraska;
- Holiday Inn, 110 S. 2nd Avenue, Kearney, Nebraska (both meetings);
- Holiday Inn, 141 N. 9th Street, Lincoln, Nebraska;
- Ramada Inn, I–76 & Hwy. 6, Sterling, Colorado;
- Northern Colorado Water Conservancy, 220 Water Avenue, Berthoud, Colorado
- Holiday Inn, 120th & I–25, Denver, Colorado.

Written comments are to be submitted to the Bureau of Reclamation, Platte River EIS Office (PL–100), PO Box 25007, Denver, Colorado, 80225–0007, or by e-mail at *platte@prs.usbr.gov*.

FOR FURTHER INFORMATION, CONTACT: Lynn Holt, Platte River EIS Office at the above address, or by telephone at (303) 445–2096, or e-mail at *platte@prs.usbr.gov*.

SUPPLEMENTARY INFORMATION: Organizations and individuals wishing to present statements at the hearings should contact the Bureau of Reclamation, Platte River EIS Office, to announce their intention to participate.

Oral comments at the hearings will be limited to 3–5 minutes, depending upon the number of persons wishing to speak. The hearing facilitator may allow any speaker to provide additional oral comments after all persons wishing to comment have been heard.

Written comments from those unable to attend or those wishing to supplement their oral presentations at the hearings should be received by Reclamation's Platte River EIS Office at the above address by August 20, 2004, for inclusion in the meeting notes.

Public Disclosure Statement

Comments received in response to this notice will become part of the

administrative record for this project and are subject to public inspection. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that Reclamation withhold their home address from public disclosure, which will be honored to the extent allowable by law. There also may be circumstances in which Reclamation would withhold a respondent's identify from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. Reclamation will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses available for public disclosure in their entirety.

Dated: June 17, 2004.

Mary Josie Blanchard,

Deputy Director, Environmental Policy & Compliance.

[FR Doc. 04–14857 Filed 7–1–04; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1082 and 1083 (Preliminary)]

Chlorinated Isocyanurates From China and Spain

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China and Spain of chlorinated isocyanurates, provided for in subheading 2933.69.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On May 14, 2004, a petition was filed with the Commission and Commerce by Clearon Corp., Fort Lee, NJ, and Occidental Chemical Corp., Dallas, TX, alleging that an industry in the United States is materially injured by reason of LTFV imports of chlorinated isocyanurates from China and Spain. Accordingly, effective May 14, 2004, the Commission instituted antidumping duty investigations Nos. 731–TA–1082 and 1083 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 21, 2004 (69 FR 29328). The conference was held in Washington, DC, on June 4, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 28, 2004. The views of the Commission are contained in USITC Publication 3705 (July 2004), entitled *Chlorinated Isocyanurates from China and Spain: Investigations Nos. 731–TA–1082 and 1083 (Preliminary).*

Issued: June 29, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–15110 Filed 7–1–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–44 (Second Review)]

Sorbitol from France

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject review.

EFFECTIVE DATE: June 28, 2004.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179 or *fred.fischer@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On May 7, 2004, the Commission established a schedule for the conduct of the subject expedited five-year review (69 FR 28949, May 19, 2004). Subsequently, on June 3, 2004, the Department of Commerce (Commerce) extended the time limit for its final results in the expedited five-year review from June 1, 2004, to not later than June 15, 2004 (69 FR 31354). On June 22, 2004, Commerce again extended the time limit for its final results from June 15, 2004, to not later than June 30, 2004 (69 FR 34652). Commerce published its final results for the subject review on June 28, 2004 (69 FR 36062). The Commission, therefore, has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B),[1] and is revising its schedule to reflect the date of the final

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[1] As a transition order five-year review, the Commission determines that the subject review is extraordinarily complicated pursuant to section 751(c)(5)(C) of the Tariff Act of 1930.

results of Commerce's expedited sunset review.

As provided for in the Commission's original scheduling notice (69 FR 28949, May 19, 2004), final party comments concerning Commerce's final results of its expedited sunset review are due three business days after the issuance of Commerce's results, or in this case by July 1, 2004.

For further information concerning this expedited review see the Commission's notice cited above and the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 29, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–15060 Filed 7–1–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–04–017]

The Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: July 8, 2004, at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–44 (Second Review) (Sorbitol from France)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before July 16, 2004.)
5. Inv. Nos. 701–TA–373 and 731–TA–770–775 (Review) (Stainless Steel Wire Rod from Italy, Japan, Korea, Spain, Sweden, and Taiwan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before July 20, 2004.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 29, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–15166 Filed 6–30–04; 9:36 am]

BILLING CODE 7020–02–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
- CT030001 (Jun. 13, 2003)
- CT030002 (Jun. 13, 2003)
- CT030003 (Jun. 13, 2003)
- CT030004 (Jun. 13, 2003)

New Jersey
- NJ030001 (Jun. 13, 2003)
- NJ030002 (Jun. 13, 2003)
- NJ030003 (Jun. 13, 2003)
- NJ030004 (Jun. 13, 2003)
- NJ030005 (Jun. 13, 2003)
- NJ030007 (Jun. 13, 2003)

New York
- NY030002 (Jun. 13, 2003)
- NY030008 (Jun. 13, 2003)
- NY030017 (Jun. 13, 2003)

Volume II

District of Columbia
DC030001 (Jun. 13, 2003)
DC030003 (Jun. 13, 2003)
Maryland
MD030002 (Jun. 13, 2003)
MD030010 (Jun. 13, 2003)
MD030019 (Jun. 13, 2003)
MD030026 (Jun. 13, 2003)
MD030031 (Jun. 13, 2003)
MD030034 (Jun. 13, 2003)
MD030043 (Jun. 13, 2003)
MD030048 (Jun. 13, 2003)
MD030055 (Jun. 13, 2003)
MD030057 (Jun. 13, 2003)
Pennsylvania
PA030004 (Jun. 13, 2003)
PA030006 (Jun. 13, 2003)
PA030008 (Jun. 13, 2003)
PA030010 (Jun. 13, 2003)
PA030023 (Jun. 13, 2003)
PA030024 (Jun. 13, 2003)
PA030025 (Jun. 13, 2003)
PA030026 (Jun. 13, 2003)
PA030027 (Jun. 13, 2003)
PA030029 (Jun. 13, 2003)
PA030030 (Jun. 13, 2003)
PA030031 (Jun. 13, 2003)
PA030032 (Jun. 13, 2003)
PA030033 (Jun. 13, 2003)
PA030035 (Jun. 13, 2003)
PA030038 (Jun. 13, 2003)
PA030040 (Jun. 13, 2003)
PA030042 (Jun. 13, 2003)
Virginia
VA030052 (Jun. 13, 2003)
VA030055 (Jun. 13, 2003)
VA030092 (Jun. 13, 2003)
VA030099 (Jun. 13, 2003)

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Tennessee
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TN030057 (Jun. 13, 2003)

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IL030002 (Jun. 13, 2003)
IL030003 (Jun. 13, 2003)
IL030005 (Jun. 13, 2003)
IL030006 (Jun. 13, 2003)
IL030008 (Jun. 13, 2003)
IL030009 (Jun. 13, 2003)
IL030011 (Jun. 13, 2003)
IL030012 (Jun. 13, 2003)
IL030013 (Jun. 13, 2003)
IL030014 (Jun. 13, 2003)
IL030015 (Jun. 13, 2003)
IL030025 (Jun. 13, 2003)
IL030039 (Jun. 13, 2003)
IL030040 (Jun. 13, 2003)
IL030041 (Jun. 13, 2003)
IL030056 (Jun. 13, 2003)
IL030059 (Jun. 13, 2003)
Michigan
MI030007 (Jun. 13, 2003)
Minnesota
MN030001 (Jun. 13, 2003)
MN030003 (Jun. 13, 2003)
MN030005 (Jun. 13, 2003)
MN030007 (Jun. 13, 2003)
MN030008 (Jun. 13, 2003)
MN030013 (Jun. 13, 2003)
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MN030019 (Jun. 13, 2003)
MN030027 (Jun. 13, 2003)
MN030039 (Jun. 13, 2003)
MN030043 (Jun. 13, 2003)
MN030045 (Jun. 13, 2003)
MN030047 (Jun. 13, 2003)
MN030049 (Jun. 13, 2003)
MN030057 (Jun. 13, 2003)
MN030058 (Jun. 13, 2003)
MN030059 (Jun. 13, 2003)
MN030061 (Jun. 13, 2003)
MN030062 (Jun. 13, 2003)

Volume V

Iowa
IA030002 (Jun. 13, 2003)
IA030031 (Jun. 13, 2003)
Kansas
KS030008 (Jun. 13, 2003)
Missouri
MO030053 (Jun. 13, 2003)
Nebraska
NE030001 (Jun. 13, 2003)
NE030003 (Jun. 13, 2003)
NE030007 (Jun. 13, 2003)
NE030010 (Jun. 13, 2003)
NE030011 (Jun. 13, 2003)
NE030019 (Jun. 13, 2003)

Volume VI

Oregon
OR030001 (Jun. 13, 2003)
OR030002 (Jun. 13, 2003)
OR030007 (Jun. 13, 2003)
Washington
WA030001 (Jun. 13, 2003)
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WA030003 (Jun. 13, 2003)
WA030008 (Jun. 13, 2003)
WA030011 (Jun. 13, 2003)
WA030013 (Jun. 13, 2003)
WA030023 (Jun. 13, 2003)
WA030025 (Jun. 13, 2003)
WA030027 (Jun. 13, 2003)

Volume VII

California
CA030004 (Jun. 13, 2003)
CA030009 (Jun. 13, 2003)
CA030013 (Jun. 13, 2003)
CA030027 (Jun. 13, 2003)
CA030029 (Jun. 13, 2003)
CA030030 (Jun. 13, 2003)
CA030031 (Jun. 13, 2003)
CA030032 (Jun. 13, 2003)
CA030037 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 24th day of June 2004.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–14700 Filed 7–1–04; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (04–078)]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA;

Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Nancy Kaplan, NASA Reports Officer, NASA Headquarters, 300 E Street, SW., Code VE, Washington, DC 20546, (202) 358–1372, *nancy.kaplan@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is renewing an existing collection which is used to identify all new technologies (*i.e.*, "inventions, discoveries, improvements, and innovations") resulting from work performed under NASA contracts and agreements. The requirement for this information is set forth in section 305(b) of the National Aeronautics and Space Act of 1958, and subpart 1827 of the NASA Federal Acquisition Regulation Supplement.

II. Method of Collection

NASA uses both paper and electronic methods to collect this information. Respondents may submit NASA Form 1679, Disclosure of Invention and New Technology, or use the eNTRe system for electronic reporting.

III. Data

Title: AST—Technology Utilization.

OMB Number: 2700–0009.

Type of review: Revision of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Estimated Number of Respondents: 538.

Estimated Time per Response: Ranges from 0.75 hours to 1 hour.

Estimated Total Annual Burden Hours: 1545.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Dated: June 21, 2004.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 04–15107 Filed 7–1–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (04–079)]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Nancy Kaplan, NASA Reports Officer, NASA Headquarters, 300 E Street, SW., Code VE, Washington, DC 20546, (202) 358–1372, *nancy.kaplan@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is initiating a new collection designed to assess current levels of customer satisfaction on an Agency-wide basis in key service areas that are managed as part of the NASA Integrated Information Infrastructure Program. The information collected will establish a baseline for future customer satisfaction surveys, and will identify and assist in the implementation of appropriate corrective measures for improved products and services that meet the needs of NASA customers.

II. Method of Collection

NASA will collect this information electronically via a Web-based survey.

III. Data

Title: NASA Chief Information Officer Customer Satisfaction Survey.

OMB Number: 2700–XXXX.

Type of review: New collection.

Affected Public: Federal Government; business or other for-profit.

Estimated Number of Respondents: 7,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 2,334.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Dated: June 21, 2004.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 04–15108 Filed 7–1–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Literature section (Access to Artistic Excellence category) to the National Council on the Arts will be held on July 28–30, 2004 in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting, from 11 a.m. to 12 p.m. on July 30, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on July 28–29, and from 9 a.m. to 11 a.m. and 12 p.m. to 4 p.m. on July 30, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National

Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 14, 2004, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: June 29, 2004.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 04–15079 Filed 7–1–04; 8:45 am]

BILLING CODE 7537–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Public Hearing; Meetings; Sunshine Act

TIME AND DATE: 2 p.m., Thursday, July 22, 2004.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing OPEN to the Public a 2 p.m.

PURPOSE: Annual Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Friday, July 16, 2004. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement of OPIC's Corporate Secretary no later than 5 p.m., Friday, July 16, 2004. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

Dated: June 30, 2004.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 04–15181 Filed 6–30–04; 10:49 am]

BILLING CODE 3210–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection:

Representative Payee Monitoring; OMB 3220–0151.

Under Section 12 of the Railroad Retirement Act (RRA), the RRB may pay annuity benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or a minor. The RRB is responsible for determining if direct payment to an annuitant or a representative payee would best serve the annuitant's best interest. The accountability requirements authorizing the RRB to conduct periodic monitoring of representative payees, including a written accounting of benefit payments received, are prescribed in 20 CFR 266.7.

The RRB utilizes the following forms to conduct its representative payee monitoring program.

Form G–99a, Representative Payee Report, is used to obtain information needed to determine whether the benefit payments certified to the representative payee have been used for the annuitant's current maintenance and personal needs and whether the representative payee continues to be concerned with the annuitant's welfare. The RRB also includes RRB Form G–99a(Enc), Representative Payee Duties, which includes the Paperwork Reduction Act notice and a list of representative payee duties with each RRB Form G–99a released. RRB Form G–99c, Representative Payee Evaluation Report, is used to obtain more detailed information from a representative payee who fails to complete and return Form G–99a, or in situations when the returned Form G–99a indicates the possible misuse of funds by the representative payee. Form G–99c contains specific questions concerning the representative payee's performance and is used by the RRB to determine whether or not the representative payee should continue in that capacity. Completion of the forms in this collection is required to retain benefits.

The RRB proposes non-burden impacting editorial and formatting changes to Form G–99a, largely to clarify instructions. In addition, Form G–99a (Enc) will no longer be a separate form but will become pages 3 and 4 of Form G–99a. No changes are proposed for Form G–99c. The completion time for Form G–99a is estimated at 18 minutes per response. The completion time for Form G–99c is estimated at between 24 to 31 minutes per response. The RRB estimates that approximately 6,000 Form G–99a's and 535 G–99c's are completed annually.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting

material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 04–15031 Filed 7–1–04; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49916; File No. SR–CBOE–2004–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Amend CBOE Rule 8.85 to Require the Immediate Display of Customer Limit Orders

June 25, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and, III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend CBOE Rule 8.85 to require the immediate display of customer limit orders. The text of the proposed rule change follows. Additions are in *italics*. Deletions are in [brackets].

* * * * *

Rule 8.85 DPM Obligations

(a) No change.

(b) Agency Transactions. Each DPM shall fulfill all of the obligations of a Floor Broker (to the extent that the DPM acts as a Floor Broker) and of an Order Book Official under the Rules, and shall satisfy each of the [following] requirements *contained in this paragraph*, in respect of each of the securities allocated to the DPM[:]. *To the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (b)(i) through (b)(vii) of this Rule and the general obligations of a Floor Broker or of an Order Book Official under the Rules, subparagraphs (b)(i) through (b)(vii) of this Rule shall govern.*

[(i) place in the public order book any order in the possession of the DPM which is eligible for entry into the book unless (A) the DPM executes the order upon its receipt or (B) the customer who placed the order has requested that the order not be booked, and upon receipt of the order, the DPM announces in public outcry the information concerning the order that would be displayed if the order were a displayed order in the public order book;]

(i) Display Obligation: Each DPM shall display immediately the full price and size of any customer limit order that improves the price or increases the size of the best disseminated CBOE quote. "Immediately" means, under normal market conditions, as soon as practicable but no later than 30 seconds after receipt ("30-second standard") by the DPM. The term "customer limit order" means an order to buy or sell a listed option at a specified price that is not for the account of either a broker or dealer; provided, however, that the term customer limit order shall include an order transmitted by a broker or dealer on behalf of a customer.

(A) An order executed upon receipt;

(B) An order where the customer who placed it requests that it not be displayed, and upon receipt of the order, the DPM announces in public outcry the information concerning the order that would be displayed if the order were subject to being displayed;

(C) An order delivered immediately upon receipt to another options exchange that is a participant in the Intermarket Options Linkage Plan;

(D) The following orders as defined in Rule 6.53: contingency orders; not-held orders; one-cancels-the-other orders; all or none orders; fill or kill orders; immediate or cancel orders; complex orders (e.g., spreads, straddles, combinations); and stock-option orders;

(E) Orders received before or during a trading rotation (as defined in Rule 6.2, 6.2A, and 6.2B), including Opening Rotation Orders as defined in Rule 6.53(l), are exempt from the 30-second standard, however, they must be displayed immediately upon conclusion of the applicable rotation; and

(F) Large Sized Orders: Orders for more than 100 contracts, unless the customer placing such order requests that the order be displayed.

(ii)–(v) No change.

(vi) not represent discretionary orders as a Floor Broker or otherwise.

[To the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (b)(i) through (b)(vi) of this Rule and the general obligations of a Floor Broker or of an Order Book Official under the Rules, subparagraphs (b)(i) through (b)(vi) of this Rule shall govern.]

(vii) No change.

[To the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (b)(i) through (b)(vi) of this Rule and the general obligations of a Floor Broker or of an Order Book Official under the Rules, subparagraphs (b)(i) through (b)(vii) of this Rule shall govern.]

(c)–(e) No change.

*** * * Interpretations and Policies**

No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 11Ac1–4 under the Act,[3] the Commission's Limit Order Display Rule, requires that immediately upon receipt, equity market specialists and OTC market makers either display in their quotes qualified customer limit orders that improve the price or size or execute or re-route those orders to other market centers. Under the Commission's Limit Order Display Rule, to comply with the requirement that display take place "immediately," specialists and market makers must display (or execute or re-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* 17 CFR 240.11Ac1–4.

route) eligible customer limit orders "as soon as is practicable after receipt which, under normal market conditions, would require display no later than 30 seconds after receipt."[4] The Commission's Limit Order Display Rule currently does not apply to the options markets.

CBOE proposes to amend CBOE Rule 8.85(b)(i) to codify an immediate display requirement with respect to eligible customer limit orders ("Display Obligation"). As proposed, each DPM would be required to display immediately the full price and size of any customer limit order that improves the price or increases the size of the best disseminated CBOE quote. As proposed, CBOE defines "immediately" to mean, under normal market conditions, as soon as practicable but no later than 30-seconds after receipt by the DPM.[5] CBOE proposes to define the term "customer limit order" as follows: An order to buy or sell a listed option at a specified price that is not for the account of either a broker or dealer; provided, however, that the term customer limit order shall include an order transmitted by a broker or dealer on behalf of a customer.

CBOE proposes to exempt, or partially exempt, certain order types from the Display Obligation. CBOE also proposes to exempt an order executed upon receipt and an order where the customer who placed it requests that it not be displayed, and upon receipt of the order, the DPM announces in public outcry the information concerning the order that would be displayed if the order were subject to being displayed. CBOE further proposes that orders delivered immediately upon receipt to another options exchange that is a participant in the Intermarket Options Linkage Plan be exempted from the Display Obligation.

CBOE also proposes to exempt the following types of orders from its Display Obligation:

Contingency Orders

Market-if-Touched (CBOE Rule 6.53(c)(i)) and Stop (stop-loss) Orders (CBOE Rule 6.53(c)(iii))—These orders are not executable until the market reaches a specified "trigger" price, at which point each converts to a market order. As such, they are not available to trade and have no standing in the quoted markets until the specified price trigger is reached. A trade must be the triggering event for a Market-if-Touched order; a trade or a quote can be the triggering event for a Stop order. Because they convert to market orders upon the triggering event, these order types cannot then be subject to the display requirement. Instead, they are subject to the firm quote requirements.

Market on Close Orders ("MOC") (CBOE Rule 6.53(c)(ii))—While an MOC may have a limit price attached, it is not eligible for representation until the close of trading is imminent. Regardless of the time at which an MOC order is entered, the DPM is required to hold such order, and is precluded from representing, displaying or booking it, until as near as possible to the close of trading. Furthermore, because representation and execution of these orders must occur on or as near to the close of trading as possible, it would be difficult if not impossible to determine whether members met an appropriate display standard for such orders.

Stop Limit Order (CBOE Rule 6.53(c)(iv))—A Stop-Limit order is not "triggered" until the option contract trades or is bid (offered) at or above (below) the stop price, at which point it converts to a limit order. As such, a Stop-Limit order has no standing in the quoted markets until the specified price trigger is reached. The limit price on such an order is not required to be the same as the stop price. The resulting new limit order is subject to the current and proposed display requirement if routed to a DPM. Currently, these orders are not eligible for electronic routing and are generally handled by non-DPM agents.

Not Held Orders (CBOE Rule 6.53(g))—A Not Held order is a discretionary order with instructions granting the agent flexibility as to the price and or time of execution. CBOE Rule 8.85(b)(vi) prohibits DPMs from representing discretionary orders, including Not Held orders.

One-Cancels-the-Other Orders ("OCO") (CBOE Rule 6.53(h))—An OCO order is comprised of two or more orders designated for treatment as a collective unit. The execution of any one of the component orders cancels the other(s). If the DPM cannot execute any of the orders upon receipt, then none can be displayed or booked as doing so could result in the approximate simultaneous execution of more than one component order, in direct contravention of the primary order condition. Such a result would place the agent and/or customer at undue risk. OCO orders are generally not handled by a DPM agent due to the specialized nature of the order handling required.

All or None Orders ("AON") (CBOE Rule 6.53(i))—While an AON can be a limit order, instructions require the order be executed in its entirety or not at all. The Commission's Limit Order Display Rule also provides an exception for AON orders.[6]

Fill or Kill Orders ("FOK") (CBOE Rule 6.53(j))—While a FOK order can be a limit order, instructions require it be executed in its entirety immediately upon representation and, if not executed, the order is to be treated as cancelled. CBOE Rule 6.44.04 currently specifies that FOK bids or offers be treated as AONs and specifies that such bids and offers will not be disseminated by CBOE in its quotes.

Immediate or Cancel Orders ("IOC") (CBOE Rule 6.53(k))—An IOC order is a market or limit order which is to be executed in whole or in part as soon as such order is represented in the trading crowd. Any portion not executed is to be cancelled, which means it cannot be displayed. An IOC order, like an FOK order, shares most of the same characteristics of an AON order, which are exempt from the Commission's Limit Order Display Rule.[7] Given the similarity between these order types, CBOE believes that IOC orders should also be exempt.

Complex Orders: Spread (CBOE Rule 6.53(d))[8], Combo (CBOE Rule 6.53(e)), Straddle (CBOE Rule 6.53(f)), Stock-option (CBOE Rule 1.1(ii))—These orders specify instructions to trade more than one options series or product as a package, typically at a specified net debit or credit, as opposed to a specific limit price for each leg involved. Therefore, there is no specified limit price for each series involved to display in the quotes. Moreover, the Options Price Reporting Authority ("OPRA") does not accept complex order quotes at net prices. Each component of the complex order is, in essence, itself a contingency on the ability to execute the other components of the order. Since there is no guarantee that all components will become executable at the same time, if at all, forced dissemination could result in the execution of less than all components of the order. Such a "legged" execution would put the customer at undue risk. Further, the complicated nature of these

[4] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

[5] In this respect, CBOE states that "receipt by the DPM" means receipt on the PAR terminal in the DPM trading crowd, which is consistent with the firm quote definition of "time of receipt." This means that the time of receipt is when the order is received on PAR, even if the DPM or PAR operator does not happen to see it for several seconds.

[6] See 17 CFR 240.11Ac1–4(c)(7).

[7] See 17 CFR 240.11Ac1–4(c)(7).

[8] This definition of spread order includes an inter-regulatory spread order, as defined in CBOE Rule (1.1(ll)).

types of orders dictates they take longer to represent and negotiate.

Orders Received During a Trading Rotation: Orders received before or during a trading rotation (as defined in CBOE Rules 6.2, 6.2A, and 6.2B) would be exempt from the 30-second standard. During a rotation, CBOE systems attempt to find the opening price and until the opening price is established, there is no disseminated market. Once the trading rotation ends and regular trading begins, orders received before or during the trading rotation will be subject to the display requirement.[9]

Large Sized Orders: The Commission's Limit Order Display Rule provides a general exclusion for block size orders of at least 10,000 shares.[10] CBOE proposes to adopt a similar exception for large sized orders. Accordingly, there will be no obligation to display orders for more than 100 contracts, unless the customer placing such order requests otherwise.

Finally, CBOE proposes to relocate the last paragraph of CBOE Rule 8.85(b) to the introductory paragraph of CBOE Rule 8.85(b).[11] Nothing in the rule text changes other than its location within the rule.

2. Statutory Basis

The Exchange believes the proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, CBOE believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.[13] Furthermore, CBOE believes that the proposed changes are consistent with the Act's requirement that an exchange's rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–35 and should be submitted on or before July 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15083 Filed 7–1–04; 8:45 am]

BILLING CODE 8010–01–U

[9] CBOE Rule 6.53(1) provides that orders may be designated as Opening Rotation orders. An opening rotation order is a market order that requires execution in whole or in part only during the opening rotation. Orders received before or during an opening rotation must be designated as opening rotation orders, otherwise the unexecuted portion automatically will be treated as an unexecuted limit order and will be displayed after the rotation ends.

[10] *See* 17 CFR 240.11Ac1–4(c)(4).

[11] This paragraph states, "To the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (b)(i) through (b)(vii) of this Rule and the general obligations of a Floor Broker or of an Order Book Official under the Rules, subparagraphs (b)(i) through (b)(vii) of this Rule shall govern." This paragraph actually appears in two locations in Rule 8.85(b). The Exchange proposes to eliminate the second reference.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49919; File No. SR–CBOE–2004–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to a One-Month Extension of the $5 Quote Width Pilot Program

June 25, 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 June 25, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The CBOE has submitted the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change under Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In January 2004, the CBOE implemented a six-month pilot program ("Pilot Program"), which expires on June 29, 2004, that permits quote spread parameters of up to $5, regardless of the price of the bid, for up to 200 options classes traded on the CBOE's Hybrid Trading System ("Hybrid").[5] The CBOE subsequently expanded the Pilot Program to include all options classes traded on Hybrid [6] and limited the applicability of the $5 quote spreads permitted under the Pilot Program to quotations that are submitted electronically to Hybrid.[7] The CBOE proposes to extend the Pilot Program through July 29, 2004. To prevent a lapse of the Pilot Program, the CBOE has asked the Commission to waive the 30-day operative delay in Rule 19b–4(f)(6)(iii).[8] The text of the proposed rule change appears below. Additions are italicized; deletions are bracketed.

Rule 8.7 Obligations of Market-Makers

(a) No change.
(b) No change.
(i)–(iii) No change.
(iv) No change.
(A) [For a six month period expiring on June 29, 2004] *Until July 29, 2004,* options on classes trading on the Hybrid system may be quoted electronically with a difference not to exceed $5 between the bid and offer regardless of the price of the bid. The $5 quote widths shall only apply to classes trading on the Hybrid system and only following the opening rotation in each security (*i.e.*, the widths specified in paragraph (b)(iv) above shall apply during opening rotation). Quotes given in open outcry in Hybrid classes may not be quoted with $5 widths and instead must comply with the legal width requirements (*e.g.*, no more than $0.25 between the bid and offer for each option contract for which the bid is less than $2) described in paragraph (iv) and not subparagraph (iv)(A).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Pilot Program became effective in January 2004 and designated 200 options classes that, for a six-month period, could be quoted with a difference not to exceed $5 between the bid and offer regardless of the price of the bid.[9] In February 2004, the CBOE expanded the number of options classes in the Pilot Program to include all options classes trading on Hybrid.[10] The CBOE subsequently limited the applicability of the $5 quote spreads permitted under the Pilot Program to quotations that are submitted electronically to Hybrid.[11]

The Pilot Program expires on June 29, 2004. As part of the Pilot Program, the CBOE committed to prepare and submit to the Commission a report assessing the operation of the Pilot Program and, in particular, the quality of the quotations for the options included in the Pilot Program. The CBOE is in the process of preparing the report and anticipates submitting it to the Commission shortly. Given the impending expiration of the Pilot Program, however, the CBOE requests a one-month extension of the Pilot Program, through July 29, 2004, to allow the Commission to review the report and consider a subsequent CBOE request to make the Pilot Program permanent.

2. Statutory Basis

The CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the CBOE believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CBOE has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. As required under Rule 19b–4(f)(6)(iii), the CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–

[3] 15 U.S.C. 78s(b)(3)(A).
[4] 17 CFR 240.19b–4(f)(6).
[5] *See* Securities Exchange Act Release No. 49153 (January 29, 2004), 69 FR 5620 (February 5, 2004) (notice of filing and immediate effectiveness of File No. SR–CBOE–2003–50) ("Pilot Notice").
[6] *See* Securities Exchange Act Release No. 49318 (February 25, 2004), 69 FR 10085 (March 3, 2004) (notice of filing and immediate effectiveness of File No. SR–CBOE–2004–10) ("February Notice").
[7] *See* Securities Exchange Act Release No. 49791 (June 2, 2004), 69 FR 32389 (June 9, 2004) (order approving File No. SR–CBOE–2004–20) ("June Order").
[8] 17 CFR 240.19b–4(f)(6)(iii).
[9] *See* Pilot Notice, *supra* note 5.
[10] *See* February Notice, *supra* note 6.
[11] *See* June Order, *supra* note 7.
[12] 15 U.S.C. 78f(b).
[13] 15 U.S.C. 78f(b)(5).
[14] 15 U.S.C. 78s(b)(3)(A).
[15] 17 CFR 240.19b–4(f)(6).

4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The CBOE has requested that the Commission waive the 30-day operative delay to allow the CBOE to continue the Pilot Program without interruption for an additional 30 days, through July 29, 2004, while the Commission considers the Pilot Program report that the CBOE will submit to the Commission. The CBOE believes that the Pilot Program has been successful and has provided market makers with the ability to more accurately price options in all types of market conditions. For this reason, the CBOE believes that it is important from a liquidity-providing standpoint to allow the Pilot Program to continue uninterrupted.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will permit the Pilot Program to continue without interruption through July 29, 2004.[16] For this reason, the Commission designates that the proposal become operative immediately.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–36. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–36 and should be submitted on or before July 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15085 Filed 7–1–04; 8:45 am]

BILLING CODE 8010–01–U

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49924; File No. SR–DTC–2004–05]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Look-Ahead Process

June 28, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 7, 2004, the Depository Trust Company ("DTC") 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 primarily by DTC, The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow DTC to expand the application of its Look-Ahead process to all equity transactions and to all valued pledge and valued release transactions.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, DTC's Look-Ahead process reduces transaction blockage for debt securities. To do so, the Look-Ahead processing system identifies a receive transaction pending due to a net debit cap insufficiency and determines if there is an offsetting delivery transaction pending because of a quantity deficiency in the same security that would permit both transactions to be completed in compliance with DTC's risk management system controls. The system calculates the net effect of offsetting transactions in the accounts of the three participants involved. If the net effect of the transaction is in positive risk management controls in all three accounts, the transactions will be completed. As a result of this reduced blockage, participants have experienced improved timeliness of transactions completing in the system, increased trade certainty, and improved straight-through processing.

To extend and benefits of the Look-Ahead process, DTC proposes to expand the Look-Ahead process to include all equity transactions and to include all valued pledge and valued release

[2] Look-Ahead processing is currently available for municipal and corporate bonds transactions pursuant to Securities Exchange Act Release No. 48007 (June 10, 2003), 68 FR 35744 (June 16, 2003) (File No. DTC–2003–07) (order allowing DTC to establish Look-Ahead processing).

transactions in addition to deliveries. DTC intends to implement the proposed enhancement in the third quarter of 2004.

The proposed rule change is consistent with the requirements of section 17A(b)(3)(A) of the Act [3] and the rules and regulations thereunder because it will promote the prompt and accurate settlement of securities transactions and will be implemented in a manner that is consistent with DTC's risk management controls.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has discussed this rule change proposal in its current form with various participants and industry groups. DTC advised participants of the proposed enhancements in Important Notice #5749 (January 22, 2004).

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 DTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–DTC–2004–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–DTC–2004–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtc.org*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2004–05 and should be submitted on or before July 23, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15048 Filed 7–1–04; 8:45 am]

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[3] 15 U.S.C. 78q(b)(3)(A).

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49918; File No. SR–ISE–2004–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc. Relating to the Extension of the Pilot Program for Quotation Spreads

June 25, 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 June 24, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. The proposed rule change has been filed by the ISE under Rule 19b–4(f)(6) of the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On March 19, 2003, the Commission approved an ISE proposal to establish a pilot program permitting the allowable quotation spread for options on up to 50 equity securities to be $5, regardless of the price of the bid ("Pilot Program").[4] The Pilot Program was extended several times, most recently until June 29, 2004, and expanded to include all options trading on the ISE.[5] The ISE proposes to extend the Pilot Program until July 29, 2004. To prevent a lapse in the operation of the Pilot Program, the ISE has asked the Commission to waive the 30-day operative delay contained in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 47532, 68 FR 14728 (March 26, 2003) (order approving File No. SR–ISE–2001–15) ("Pilot Program Approval Order").

[5] *See* Securities Exchange Act Release Nos. 48514 (September 22, 2003), 68 FR 55685 (September 26, 2003) (notice of filing and immediate effectiveness of File No. SR–ISE–2003–21) (extending the Pilot Program through January 31, 2004); 49149 (January 29, 2004), 69 FR 05627 (notice of filing and immediate effectiveness of File No. SR–ISE–2004–02) (extending the Pilot Program through March 31, 2004); and 49509 (March 31, 2004), 69 FR 18411 (April 7, 2004) (notice of filing and immediate effectiveness of File No. ISE–2004–10) (extending the Pilot Program through June 29, 2004, and expanding the Pilot Program to include all options trading on the ISE).

Rule 19b–4(f)(6)(iii).[6] The text of the proposed rule change appears below. Additions are italicized; deletions are bracketed.

Rule 803. Obligations of Market Makers

* * * * *

Supplementary Material To Rule 803

.01 Pursuant to paragraph (b)(4) of Rule 803, during a pilot period expiring on [June] *July* 29, 2004, all options classes may be quoted with a difference not to exceed $5 between the bid and offer regardless of the price of the bid.

* * * * *

(b) Inapplicable.

(c) Inapplicable.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ISE's rules contain maximum quotation spread requirements that vary from $.25 to $1.00, depending on the price of the option. On March 19, 2003, the Commission approved a proposal to amend ISE Rule 803, "Obligations of Market Makers," to establish a six-month Pilot Program in which the allowable quotation spread for options on up to 50 underlying equity securities would be $5, regardless of the price of the bid.[7] The Pilot Program has been extended several times.[8]

The ISE believes that the Pilot Program has been successful, and the ISE has filed a proposal with the Commission to make the Pilot Program permanent.[9] In this regard, and as required by the Pilot Program Approval Order, the ISE submitted to the Commission a report detailing the ISE's experience with the Pilot Program, which provided data regarding the 50 equity options initially included in the Pilot Program.

The purpose of the current proposal is to extend the Pilot Program until July 29, 2004, while the Commission considers the ISE's proposal to make the Pilot Program permanent. During the extension and pursuant to the May 2004 Notice,[10] the ISE will provide the Commission with an updated Pilot Program report that covers all of the options classes in the expanded Pilot Program. The ISE will provide the updated report to the Commission by June 29, 2004.

2. Statutory Basis

According to the ISE, the statutory basis for the proposal is the requirement under Section 6(b)(5) of the Act[11] that a national securities exchange have rules that are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The ISE has not solicited, and does not intend to solicit comments on the proposed rule change. The ISE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The ISE has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. As required under Rule 19b–4(f)(6)(iii), the ISE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE has requested that the Commission waive the 30-day operative delay to prevent a lapse in the operation of the Pilot Program.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will permit the Pilot Program to continue without interruption through July 29, 2004.[14] For this reason, the Commission designates the proposal to be operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2004–23 on the subject line.

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] *See* Pilot Program Approval Order, *supra* note 4.

[8] *See* note 5, *supra*.

[9] *See* Securities Exchange Act Release No. 49754 (May 21, 2004), 69 FR 30352 (May 27, 2004) (notice of filing of File No. SR–ISE–2003–22) ("May 2004 Notice").

[10] *See* note 9, *supra*.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–ISE–2004–23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2004–23 and should be submitted on or before July 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15084 Filed 7–1–04; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49920; File No. SR–NASD–2004–094]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposed Amendments to TRACE Rule 6250 and Related TRACE Rules To Disseminate Transaction Information on TRACE-Eligible Securities and Facilitate Dissemination

June 25, 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 June 17; 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend: (1) Rule 6210 to amend two defined terms and add a new defined term; (2) Rule 6250 to expand dissemination to include all TRACE-eligible securities[3] and to delete provisions regarding market aggregate and last sale data and the treatment of certain transaction reports; and (3) Rule 6260 to amend the notification provisions to require information needed to implement various dissemination schedules, and to make certain minor, technical changes. Rule 6210, Rule 6250 and Rule 6260 are part of the Transaction Reporting and Compliance Engine rules ("TRACE Rules"). NASD is also proposing that the amendments to Rule 6250 be implemented in two stages, and that not later than nine months after the implementation of the second stage, NASD review and consider the effects of the amendments to Rule 6250 on the trading of TRACE-eligible securities, and review the dissemination provisions then in effect.

Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

Rule 6210. Definitions

(a) through (g) No Change

(h) The term "Investment Grade" shall mean *a TRACE-eligible security that, if rated by only one nationally recognized statistical rating organization ("NRSRO"), is rated in one of the four highest generic rating categories; or if rated by more than one NRSRO, is rated in one of the four highest generic rating categories by all or a majority of such NRSROs; provided that if the NRSROs assign ratings that are evenly divided between (i) the four highest generic ratings and (ii) ratings lower than the four highest generic ratings, NASD will classify the TRACE-eligible security as Non-Investment Grade for purposes of TRACE. If a TRACE-eligible security is unrated, for purposes of TRACE, NASD may otherwise classify the TRACE-eligible security as an Investment Grade security and further classify it as being in one of the four highest generic rating categories.* [any TRACE-eligible security rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.]

(i) The term "Non-Investment Grade" shall mean *a TRACE-eligible security that, if rated by only one NRSRO, is rated lower than one of the four highest generic rating categories; or if rated by more than one NRSRO, is rated lower than one of the four highest generic rating categories by all or a majority of such NRSROs. If a TRACE-eligible security is unrated, for purposes of TRACE, NASD may otherwise classify the TRACE-eligible security as a Non-Investment Grade security and further classify it as being in one of the generic rating categories below the four highest such categories. If NASD does not have sufficient information to make a judgment regarding the classification of an unrated TRACE-eligible security, for purposes of TRACE, NASD will classify the TRACE-eligible security as having been rated B (or the equivalent rating of one or more NRSROs).*[1] [any TRACE-eligible security that is unrated, non-rated, split-rated (where one rating falls below Investment Grade), or otherwise does not meet the definition of Investment Grade in paragraph (h) above.]

[1] *"B" is a rating of Standard & Poor's, a division of the McGraw-Hill Companies, Inc. ("S&P"). S&P is a nationally recognized*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Other than TRACE-eligible securities that are issued pursuant to section 4(2) of the Securities Act of 1933 and purchased or sold pursuant to Rule 144A under the Securities Act of 1933.

statistical rating organization. S&P's ratings are proprietary to S&P and are protected by copyright and other intellectual property laws. S&P's licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any such purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without S&P's prior written consent. (The Commission believes NASD intends for this footnote to be a footnote to the rule text.)

(j) The term, "split-rated," shall mean an Investment Grade or a Non-Investment Grade security that is assigned ratings by multiple NRSROs that, for an Investment Grade security, are not in the same generic Investment Grade rating category, or, for a Non-Investment Grade security, are not in the same generic Non-Investment Grade rating category. After determining if a security is Investment Grade or Non-Investment Grade, NASD will disregard any rating, if the security is Investment Grade, that is Non-Investment Grade, or, if the security is Non-Investment Grade, that is Investment Grade. With respect to an Investment Grade security, if multiple NRSROs assign ratings that are not in the same generic Investment Grade rating category, or, with respect to a Non-Investment Grade security, if multiple NRSROs assign ratings that are not in the same generic Non-Investment Grade rating category, NASD will classify the TRACE-eligible security for purposes of TRACE by the generic rating that a majority or, if no majority, a plurality of the NRSROs assigns the security, provided that (i) if the NRSROs assign ratings that are evenly divided between two generic rating categories, NASD will classify the TRACE-eligible security for purposes of TRACE by the lower of the ratings; or (ii) if each NRSRO assigns a different generic rating, NASD will classify the TRACE-eligible security for purposes of TRACE by the lower or lowest of the ratings.

* * * * *

6250. Dissemination of [Corporate Bond Trade] *Transaction* Information

(a) *Dissemination of New Issue Aftermarket Transactions*

(1) Transaction information for TRACE-eligible securities rated by an NRSRO or classified by NASD for purposes of TRACE as BBB (or the equivalent rating of one or more NRSROs) executed during the period beginning the day a newly issued security is priced and lasting two business days ("New Issue Aftermarket-2") will not be disseminated during the New Issue Aftermarket-2. NASD will disseminate transaction information for transactions executed during the New Issue Aftermarket-2 starting on the next (third) business day, according to dissemination protocols established by NASD.

(2) Transaction information for TRACE-eligible securities rated by an NRSRO or classified by NASD for purposes of TRACE as BB (or the equivalent rating of one or more NRSROs) or lower executed during the period beginning the day a newly issued security is priced and lasting 10 business days ("New Issue Aftermarket-10") will not be disseminated during the New Issue Aftermarket-10. NASD will disseminate transaction information for transactions executed during the New Issue Aftermarket-10 starting on the next (eleventh) business day, according to dissemination protocols established by NASD.

(b) Dissemination of Secondary Market Transactions

(1) Immediate Dissemination. NASD will disseminate transaction information immediately upon receipt of a transaction report, if the report is for a transaction:

(A) In a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE above BBB (or the equivalent rating of one or more NRSROs); or

(B) In a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE as BBB (or the equivalent rating of one or more NRSROs) executed other than during the New Issue Aftermarket-2; or,

(C) In a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE as BB (or the equivalent rating of one or more NRSROs) or lower executed other than during the New Issue Aftermarket-10 if:

(i) the size of the transaction is $1 million or less (par value); or

(ii) the size of the transaction is greater than $1 million (par value), and the TRACE-eligible security is traded (a) an average of one or more times per day, during the New Issue Aftermarket-10; and (b) thereafter, an average of one or more times per day over the last 20 business days of a 90-day period determined each quarter by NASD. Such security shall remain subject to immediate dissemination until such 90-day period in which the security fails to meet the condition set forth in this subparagraph (C)(ii)(b), in which case it shall be subject to a two-or four-business day delayed dissemination, as applicable.

(2) Two-or Four-Business-Day Delayed Dissemination. For transactions in a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE as BB (or the equivalent rating of one or more NRSROs) or lower executed other than during the New Issue Aftermarket-10, NASD will disseminate transaction information on a two-or four-business-day delayed basis from the time of execution as follows:

(A) Two-Business-Day Delay. In a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE as BB (or the equivalent rating of one or more NRSROs) if:

(i) the size of the transaction is greater than $1 million (par value); and

(ii) the security is traded (a) an average of less than one time per day, during the New Issue Aftermarket-10; and (b) thereafter, an average of less than one time per day over the last 20 business days of a 90-day period determined each quarter by NASD. Such security shall remain subject to a two-business day delayed dissemination until such 90-day period in which the security fails to meet the condition set forth in this subparagraph (A)(ii)(b), in which case it shall be subject to immediate dissemination.

(B) Four-Business-Day Delay. In a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE as B (or the equivalent rating of one or more NRSROs) or lower if:

(i) the size of the transaction is greater than $1 million (par value) and;

(ii) the security is traded (a) an average of less than one time per day, during the New Issue Aftermarket-10; and (b) thereafter, an average of less than one time per day over the last 20 business days of a 90-day period determined each quarter by NASD. Such security shall remain subject to a four-business day delayed dissemination until such 90-day period in which the security fails to meet the condition set forth in this subparagraph (B)(ii)(b), in which case it shall be subject to immediate dissemination.

(c) Rule 144A

NASD will not disseminate information on a transaction in a TRACE-eligible security that is issued pursuant to Section 4(2) of the Securities Act of 1933 and resold pursuant to Rule 144A under the Securities Act of 1933.

[(a) General Dissemination Standard

Immediately upon receipt of transaction reports received at or after 8:00 a.m. through 6:29:59 p.m. Eastern Time, NASD will disseminate transaction information (except that market aggregate information and last

sale information will not be updated after 5:15 p.m. Eastern Time) in the securities described below.

(1) A TRACE-eligible security that is Investment Grade at the time of receipt of the transaction report and has an initial issuance size of $1 billion or greater.

(2) A TRACE-eligible security that is Non-Investment Grade at the time of receipt of the transaction report and is designated by NASD for dissemination according to the following criteria.

(A) The staff of NASD will designate fifty of the most actively traded Non-Investment Grade securities that are TRACE-eligible securities for dissemination under this rule, based on (i) the security's volume; (ii) the security's price; (iii) the security's name recognition; (iv) the research following of the security; (v) the security having a minimum number of bonds outstanding; (vi) the security being traded routinely by at least two dealers; and (vii) the security contributing to a representation of diverse industry groups in the group of securities designated for dissemination.

(B) A Non-Investment Grade security will not be designated, and may be immediately withdrawn from designation, for dissemination under this rule if the security: (i) has matured; (ii) has been called; (iii) has been upgraded to Investment Grade; or (iv) has been downgraded to an extent that the security's trading characteristics do not warrant designation for dissemination.

(3) A TRACE-eligible security that is Investment Grade, is rated by Moody's Investors Service, Inc. as "A3" [1] or higher, and by Standard & Poor's, a division of McGraw Hill Co., Inc., as "A-" [2] or higher, and has an original issue size of $100 million or greater. If a security is rated under this provision to qualify for dissemination at any time on or after the effective date of the rule, dissemination of transaction information on the security will continue under this paragraph unless the security is downgraded below Baa3/BBB–.

[1 Moody's Investors Service, Inc. ("Moody's") is a nationally recognized statistical rating organization. Moody's is a registered trademark of Moody's Investors Service. Moody's ratings are proprietary to Moody's and are protected by copyright and other intellectual property laws. Moody's licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without Moody's prior written consent.]

[2 Standard & Poor's, a division of the McGraw-Hill Companies, Inc. ("S&P"), is a nationally recognized statistical rating organization. S&P's ratings are proprietary to S&P and are protected by copyright and other intellectual property laws. S&P's licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any such purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without S&P's prior written consent.]

(4) Ninety to 120 TRACE-eligible securities designated by NASD that are rated "Baa/BBB" at the time of designation, according to the following standards.

(A) Three groups, each composed of up to 50 TRACE-eligible securities (Group 1, Group 2, and Group 3), but collectively not exceeding 120, shall be designated by NASD. At the time of designation, each TRACE-eligible security in Group 1 must be rated "Baa1/BBB+" and each TRACE-eligible security in Group 2 and Group 3, must be rated, respectively, "Baa2/BBB" and "Baa3/BBB-." If a TRACE-eligible security is rated one of the "Baa" ratings by Moody's and one of the "BBB" ratings by S&P and the ratings indicate two different levels of credit quality, the lower of the two ratings will be used to determine the group to which a debt security will be assigned under this paragraph (a)(4).

(B) A TRACE-eligible security that has a rating from only one rating agency will not be designated under paragraph (a)(4).

(C) Dissemination of transaction information on a TRACE-eligible security that is designated under paragraph (a)(4) will not be discontinued if one rating is, or both ratings, are downgraded or upgraded.]

[(b) Transactions Excluded From Market Aggregate, Last Sale

All trade reports in TRACE-eligible securities that are approved for dissemination and submitted to TRACE at or after 8:00 a.m. Eastern Time and prior to 5:15 p.m. Eastern Time will be included in the calculation of market aggregates and last sale except:

(1) trades reported on an "as of" basis;

(2) "when issued" trades executed on a yield basis;

(3) trades in baby bonds with a par value of less than $1,000;

(4) trades in which the price is determined by a weighted average price; and

(5) trades in which the price is a "special price," as indicated by the use of the special price modifier.]

[(c) Dissemination of Certain Trades Executed on A Business Day

(1) Reports of transactions in TRACE-eligible securities that are subject to dissemination, are executed on a business day at or after 6:30 p.m. Eastern Time through 11:59:59 p.m. Eastern Time, and are reported pursuant to Rule 6230(a)(2) on the next business day and designated "as/of" will be disseminated beginning at 8:00 a.m. Eastern Time on the day of receipt. The reported information will not be included in the calculation of the day's market aggregates.

(2) Reports of transactions in TRACE-eligible securities that are subject to dissemination, are executed on a business day at or after 12:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time, and are reported pursuant to Rule 6230(a)(3) on the same day beginning at 8:00 a.m. Eastern Time will be disseminated upon receipt. The reported information will be included in the calculation of the day's market aggregates, except as otherwise provided in Rule 6250(b)(1) through (5).]

[(d) Dissemination of Trades Executed on Non-Business Days

Reports of transactions in TRACE-eligible securities that are subject to dissemination, are executed on a non-business day at any time during the day, and are reported pursuant to Rule 6230(a)(4) on the next business day will be disseminated upon receipt. The reported information will not be included in the calculation of the day's market aggregates.]

* * * * *

Rule 6260. Managing Underwriter *or Group of Underwriters* Obligation To Obtain CUSIP *and Provide Notice*

(a) *Members Required to Provide Information and Notice*

(1) In order to facilitate trade reporting and dissemination of secondary transactions in TRACE-eligible securities, the member that is the managing underwriter *or the members that are the group of underwriters of a distribution or offering, excluding a secondary distribution or offering, of a debt security that, upon issuance will be a TRACE-eligible security ("new issue")*,[of any newly issued TRACE-eligible security] must obtain and provide information [by email or facsimile]to the TRACE Operations Center as required *below*.[under paragraph (b).] If a managing underwriter is not appointed, the group of underwriters must provide the

information *required under this rule. [comply with paragraph (b).]*

(2) The information must be provided by facsimile or e-mail.

(b) Notices

For such [TRACE-eligible securities]new issues, the managing underwriter *or group of underwriters* must provide to the TRACE Operations Center[, by email or facsimile (1) the CUSIP number; (2) the issuer name; (3) the coupon rate; (4) the maturity; (5) whether Rule 144A applies; (6) a brief description of the issue (*e.g.*, senior subordinated note, senior note); and, (7) information, as determined by NASD, [that is required to determine]*to implement the provisions of Rule 6250(a) and such other information NASD deems necessary to properly implement the reporting and dissemination of a TRACE-eligible security*[if a TRACE-eligible security must be disseminated under Rule 6250 (*e.g.*, size of issue and rating)], or if any of items (2) through (7) has not been determined, such other information as NASD deems necessary. The managing underwriter *or group of underwriters* must obtain the CUSIP number and provide it and the information listed as (2) through (7) not later than 5:00 p.m. *Eastern Time* on the business day preceding the day that the registration statement becomes effective, or, if registration is not required, the day before the securities will be priced. If an issuer notifies a managing underwriter *or group of underwriters*, or the issuer and the managing underwriter *or group of underwriters* determine, that the TRACE-eligible securities of the issuer shall be priced, offered and sold the same business day in an intra-day offering under Rule 415 of the Securities Act of 1933 or Section 4(2) and Rule 144A of the Securities Act of 1933, the managing underwriter *or group of underwriters* shall provide the information not later than 5:00 p.m. *Eastern Time* on the day that the securities are priced and offered, provided that if such securities are priced and offered on or after 5:00 p.m. *Eastern Time*, the managing underwriter *or group of underwriters* shall provide the information not later than 5:00 p.m. Eastern Time on the next business day. The managing underwriter *or group of underwriters must make a good faith determination that the security is a TRACE-eligible security before submitting the information to the TRACE Operations Center.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

i. Introduction and Background

In this proposed rule change, NASD is proposing to amend Rule 6250 to disseminate publicly transaction information for secondary market transactions in all TRACE-eligible securities, and to make related amendments to Rule 6210 and Rule 6260 to facilitate dissemination. The proposed amendments will result in NASD disseminating all TRACE-eligible securities transactions, except transactions executed pursuant to Rule 144A under the Securities Act of 1933.[4] Implementation of the proposed rule change is estimated to result in immediate dissemination of approximately 99 percent of all transactions in TRACE-eligible securities and 95 percent of the par value traded in such securities. Information on certain transactions, however, will be disseminated on a delayed basis. NASD is also proposing to delete provisions regarding market aggregates, last sale data, and the treatment of certain transaction reports in Rule 6250.

NASD is also proposing amendments to Rule 6210 and Rule 6260. In Rule 6210, NASD is proposing to amend the definitions of "Investment Grade" and "Non-Investment Grade" and to add a new defined term, "split-rated." In Rule 6260, NASD is proposing to amend the notification requirements, which will aid NASD in identifying new issues of TRACE-eligible securities and the dissemination protocols that apply to them.

NASD is also proposing that the proposed amendments to Rule 6250 regarding dissemination be implemented in two stages, Stage One and Stage Two, because certain aspects of the proposal providing for delayed dissemination will require significant operational and technical changes to NASD's TRACE System. Finally, not later than nine months after the implementation of Stage Two, NASD will review and consider the effects of the amendments to Rule 6250 on the trading of TRACE-eligible securities, and review the dissemination provisions then in effect.

The dissemination proposal was developed in consultation with the Bond Transaction Reporting Committee ("BTRC"), an advisory committee to the NASD Board of Governors.[5] The primary role of the BTRC is to make recommendations to the NASD Board concerning the dissemination of transaction information under TRACE for secondary market transactions in eligible corporate bonds. To develop this proposal, the BTRC and NASD staff analyzed significant amounts of TRACE transaction data and deliberated on various dissemination approaches.

Initial concerns of certain market participants focused on the possible impact that increased transparency may have on market liquidity. After extensive examination of approximately 18 months of TRACE data and review of two studies performed by an outside econometric team, NASD found no conclusive evidence that TRACE transparency has adversely affected liquidity. Accordingly, NASD believes full transparency is warranted. As noted above, the proposed rule change will result in dissemination of all public secondary market transactions in TRACE-eligible securities, with approximately 99 percent of total transactions and 95 percent of total par value traded being immediately disseminated.

However, there are two areas of possible concern where NASD currently believes that a more measured approach toward immediate dissemination is in the best interest of investors and the corporate bond market. First, both institutional investors and dealers have expressed concern that liquidity could be harmed by the immediate

[4] Under Rule 6230(e), certain types of transactions currently are exempt from reporting (and therefore dissemination) (*e.g.*, qualifying transactions in TRACE-eligible securities that are listed on a national securities exchange, when such transactions are executed on and reported to the exchange and the transaction information is disseminated publicly, and a parallel exemption for qualifying transactions in TRACE-eligible securities that are listed on The Nasdaq Stock Market, Inc.), and will continue to be exempt from reporting (and dissemination) under the proposal.

[5] The Committee is appointed by the NASD Board of Governors and has ten members. Five of the members were recommended by the staff of NASD and the other five were recommended by The Bond Market Association ("TBMA").

transparency of large transactions in Non-Investment Grade securities, and particularly in such securities that trade infrequently. Second, similar liquidity concerns were raised regarding the few transactions that are effected in the New Issue Aftermarket–2 or –10 for securities rated BBB or lower,[6] where reduced liquidity could potentially increase borrowing cost to issuers. Although there was no conclusive proof of harm to the market in these two areas, NASD believes that the measured approach reflected by the dissemination delays set forth in the proposed rule change will provide additional time to assess the impact of transparency on this small number of transactions.

NASD intends to continue to review the trading and the liquidity in TRACE-eligible securities during the implementation of Stages One and Two of the proposed rule change. As part of this review process, not later than nine months from the implementation of Stage Two, NASD will ask the BTRC to reconvene to review the rule and make recommendations to the NASD Board of Governors.

ii. The Dissemination Proposal

Current Dissemination Requirements

In current Rule 6250, NASD requires the dissemination of transaction information for four categories of securities: (1) A TRACE-eligible security that is Investment Grade at the time of receipt of the transaction report and has an initial issuance size of $1 billion or greater;[7] (2) approximately 50 Non-Investment Grade TRACE-eligible securities that are designated by NASD staff according to the criteria, including liquidity, set forth in Rule 6250(a)(2);[8] (3) any TRACE-eligible security that is Investment Grade, rated A or higher and has an original issue size of $100 million or greater, unless downgraded below BBB;[9] and (4) approximately 120 TRACE-eligible securities rated BBB at the time they were designated for dissemination.[10] All current dissemination is "immediate"; NASD disseminates the transaction information as soon as it is reported to NASD.

Proposed Dissemination for Transactions During the New Issue Aftermarket

NASD is proposing that dissemination for TRACE-eligible securities that are rated by an NRSRO or classified by NASD for purposes of TRACE as BBB or lower be subject to special dissemination provisions during a brief period beginning with the day a newly issued security is priced, and ending, alternatively, after either two business days ("New Issue Aftermarket-2") or ten business days ("New Issue Aftermarket-10"),[11] depending on the rating of the TRACE-eligible security.[12]

Transactions in newly issued TRACE-eligible securities rated by an NRSRO or classified by NASD for purposes of TRACE as BBB executed during their New Issue Aftermarket-2 will be subject to a dissemination delay. NASD will disseminate the withheld transaction information on all transactions executed during the New Issue Aftermarket-2 starting on the next (third) business day in accordance with NASD dissemination protocols.[13]

Transactions in newly issued TRACE-eligible securities rated by an NRSRO or classified by NASD for purposes of TRACE as BB (or the equivalent rating of one or more NRSROs) or lower executed during their New Issue Aftermarket-10 will also be subject to a dissemination delay. NASD will disseminate the withheld transaction information on all transactions executed during the New Issue Aftermarket-10 starting on the next (eleventh) business day, according to dissemination protocols established by NASD. Transaction information that is withheld pursuant to proposed Rule 6250(a)(1) and (a)(2) will be disseminated, in the order of the date and time of execution of the transactions.

Proposed Dissemination For Secondary Market Transactions Other Than New Issue Aftermarket

NASD is proposing to add new Rule 6250(b)(1) to require that the following types of transactions be disseminated immediately upon receipt: (i) transactions in any Investment Grade TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE as A or higher; (ii) transactions in a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE as BBB that are executed other than during its New Issue Aftermarket-2; and; (iii) transactions in a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE as BB (or the equivalent rating of one or more NRSROs) or lower that are executed other than during its New Issue Aftermarket-10, if the size of the transaction is $1 million or less (par value), or the size is greater than $1 million (par value), and the security is traded, on average, one or more times per day.[14] As noted previously, NASD estimates that approximately 99 percent of all secondary public transactions and 95 percent of par value traded in TRACE-eligible securities will be disseminated immediately upon NASD's receipt of the transaction information pursuant to these proposed dissemination protocols.

NASD is also proposing in Rule 6250(b)(2) that certain transactions in TRACE-eligible securities rated by an NRSRO or classified by NASD for purposes of TRACE as BB (or the equivalent rating of one or more NRSROs) or lower (other than those executed during the subject security's New Issue Aftermarket-10) be subject to either a two-business-day or four-business-day delay before the transaction information is disseminated. Under proposed Rule 6250(b)(2)(A), NASD will disseminate transaction information two business days from the time of execution of the transaction when the transaction meets the

[6] For purposes of this filing, "BBB," a rating of Standard & Poors ("S&P") or any other rating of S&P means the S&P rating and the equivalent ratings of Moody's Investors Service, Inc. ("Moody's") and any other NRSRO whose rating may be used for purposes of TRACE. Currently, NASD administers the TRACE dissemination provisions based on the ratings of S&P's and Moody's. The use of a single rating in this rule filing is for the convenience of readers only.

[7] Rule 6250(a)(1).

[8] From time to time, the staff reviews and amends the list of 50 securities; in between such comprehensive reviews, securities may be called or the staff may delete certain securities that no longer meet the criteria, at times resulting in the dissemination of less than 50 securities. *See* Rule 6250(a)(2).

[9] Rule 6250(a)(3).

[10] Rule 6250(a)(4).

[11] The first day of the period, New Issue Aftermarket-2 or, New Issue Aftermarket-10, is the day that the newly issued security is priced.

[12] Secondary market transactions in TRACE-eligible securities rated by an NRSRO or classified by NASD for purposes of TRACE as A or higher are not subject to New Issue Aftermarket dissemination delays. Accordingly, NASD will disseminate all such secondary market transactions immediately upon receipt of the transaction information.

[13] NASD is developing dissemination protocols for TRACE to implement dissemination provisions that require specific system enhancements. The dissemination protocols will address primarily the delayed dissemination provisions in proposed Rule 6250(b)(2) that apply to certain transactions in TRACE-eligible securities rated BB, and others rated B or lower. For example, it is currently anticipated that TRACE-eligible securities transactions that occur during the New Issue Aftermarket-2 will be disseminated prior to 8:00 a.m. Eastern Time on the next (third) business day in order of execution date and time. Market participants will be notified of the dissemination protocols prior to their implementation.

[14] Initially, NASD will determine the average over the 10-business-day New Issue Aftermarket-10. Thereafter, NASD will determine the average based on the last 20 business days of a 90-day period determined each quarter by NASD.

following three criteria: [15] (i) the size is greater than $1 million (par value); (ii) the TRACE-eligible security is traded, on average, less than one time per day;[16] and (iii) the security is rated by an NRSRO or classified by NASD for purposes of TRACE as BB. Under proposed Rule 6250(b)(2)(B), NASD will disseminate transaction information four business days from the time of execution [17] on securities rated by an NRSRO or classified by NASD for purposes of TRACE as B or lower when the transaction falls within criteria (i) and (ii) above.

For purposes of calculating the average daily trading of a security pursuant to proposed Rule 6250(b)(1)(C)(ii), Rule 6250(b)(2)(A)(ii) and Rule 6250(b)(2)(B)(ii), NASD, where applicable, will review a security's trading during its New Issue Aftermarket-10 to determine the appropriate dissemination protocol. That dissemination protocol will remain in effect for the security, until the next established calculation timeframe occurs. That calculation timeframe will be based on the trading activity during the last 20 business days of a 90-day period determined by NASD ("20/90 period"). Unlike a New Issue Aftermarket-10, where the timing is specific to the security, the 20/90 period will be established quarterly and will apply to all Non-Investment Grade TRACE-eligible securities.[18]

Section 4(2)/Rule 144A TRACE-Eligible Securities

NASD is proposing to prohibit the dissemination of secondary market transactions effected pursuant to Rule 144A under the Securities Act of 1933. Although subject to TRACE reporting requirements, such transactions will not be subject to dissemination. This proposed change codifies the staff's position that securities that are resold pursuant to Rule 144A, although reported to TRACE for regulatory purposes, are not subject to the dissemination provisions of Rule 6250.

iii. Ratings Under the TRACE Rules

Current Rules

Rule 6210(h) currently defines an "Investment Grade" security as a TRACE-eligible security rated by an NRSRO "in one of its four highest generic rating categories." Rule 6210(i) currently defines "Non-Investment Grade" as a TRACE-eligible security "that is unrated, non-rated, split-rated (where one rating falls below Investment Grade), or otherwise does not meet the definition of Investment Grade as defined in Rule 6210(h)." To effectively implement the dissemination provisions in proposed Rule 6250, NASD has determined to amend the definitions of "Investment Grade" and "Non-Investment Grade," and to add a new defined term, "split-rated" in proposed Rule 6210(j).

Proposed Amendments

As noted above, TRACE rules currently classify TRACE-eligible securities as either "Investment Grade" or "Non-Investment Grade," and, in the current TRACE Rules, "split-rated" means that the ratings assigned to a TRACE-eligible security are split between those two sectors (*i.e.*, the Investment Grade sector and the Non-Investment Grade sector) of the market, rather than distributed among some of the nine to 12 generic rating categories used by NRSROs.[19] However, under current and proposed dissemination provisions, a method to categorize TRACE-eligible securities more specifically is required when, for example, a security is assigned two Non-Investment Grade ratings, but the Non-Investment ratings are not in the same generic rating category (*e.g.*, a security is rated "Ba" by Moody's, which is a rating in the 5th highest generic rating category, and "B" by S&P's), which is a rating in the 6th highest generic rating category). NASD is proposing to clarify that TRACE-eligible securities, although first assigned to the universe of Investment Grade or Non-Investment Grade securities, are thereafter further classified to a specific generic rating category, using, if appropriate, the principles outlined in the new defined term, "split-rated."

First, NASD is proposing to amend the defined terms, "Investment Grade" and "Non-Investment Grade," in Rule 6210(h) and Rule 6210(i), respectively, to state explicitly that when a TRACE-eligible security is rated by only one NRSRO, or is rated by several NRSROs and the ratings that such NRSROs assign to the security are all in one of the four highest generic rating categories (or, conversely, all are in rating categories that are lower than the four highest such categories), the security will be categorized as Investment Grade (or Non-Investment Grade) in accordance with the one rating, or the multiple, similar ratings.[20]

If the TRACE-eligible security is rated by more than one NRSRO and not all of the ratings are in one of the four highest generic rating categories (*i.e.*, the Investment Grade categories), NASD will classify the security as Investment Grade if a majority of such NRSROs assigned it one of the four highest generic ratings. If the NRSROs assign rating that are evenly divided between (i) the four highest generic ratings and (ii) ratings lower than the four highest generic ratings, NASD will classify the TRACE-eligible security as a Non-Investment Grade security for purposes

[15] For example, if a transaction meeting the three criteria is executed on Monday, September 13, 2004, at 10 a.m. eastern time, the transaction will be disseminated on Wednesday, September 15, 2004, at approximately 10:01 a.m. eastern time.

[16] *See* note 14, *supra*.

[17] For example, if a transaction is executed on Monday, September 13, 2004, at 10:30 a.m. eastern time, the transaction will be disseminated on Friday, September 17, 2004, at approximately 10:31 a.m. eastern time.

[18] An example of the implementation of the dissemination protocols under the New Issue Aftermarket and 20/90 periods is as follows. A new issue that is rated BB (or the equivalent rating of one or more NRSROs) is priced on February 14, 2005. At the end of its New Issue Aftermarket-10, which would be March 1, 2005, NASD will determine the initial dissemination protocol of either immediate dissemination of all transactions or 2-business day delayed dissemination of transactions over $1 million. This protocol will remain in effect until the next 20/90 period, regardless of when it is established. For example, if March 15, 2005, has been established as the end of a 90-day period, average daily trading of a security would be calculated by looking back 20 business days to February 15, 2005, and reviewing the trading that occurred in all securities during that period. The BB-rated security in this example would be subject to this 20/90-calculation period, which would include all but the first day of its New Issue Aftermarket-10. Shortly after March 15, 2005, NASD will publish the new dissemination protocols for all securities and the next 90-day period will commence on or around April 1, 2005. If a newly-issued TRACE-eligible security is priced after the first business day of the last 20 business days of the 20/90 period, the new issue dissemination protocol will apply to the security until the next 20/90 period.

[19] The term, "generic rating category" means the rating category, however designated by symbols chosen by various NRSROs, that indicates that the bond has a grade or "quality" (*e.g.*, the "highest quality," the second highest quality, the third highest quality, and "medium grade" are the four Investment Grade categories, and "predominantly speculative," "speculative, low grade" "poor to default," "highest speculation," "lowest quality, no interest," which are the fifth through ninth generic rating categories, are Non-Investment Grade categories). For example, to show that a security falls within the highest generic rating category, S&P assigns a rating of "AAA" and Moody's assigns a rating of "Aaa." Skipping three generic rating categories, securities that are rated in the 5th highest generic rating category are rated by S&P as "BB" and by Moody's as "Ba." See, *e.g.*, "Dictionary of Finance and Investment Terms (4th ed.), ed. by Downes, J., Goodman, J., 1995, pp. 458–459, for a comparison of various comparable NRSRO proprietary symbols used to rate bonds.

[20] For example, assume that three NRSROs rated XPL Security. S&P rated XPL Security as "A," Moody's rated it as "A," and a third NRSRO rated it in the fourth highest generic rating category. Although the three NRSROs assigned ratings that fall in two generic rating categories, all the ratings are within the four generic rating categories that are considered "Investment Grade" ratings, so for purposes of TRACE, the security is considered "Investment Grade."

of TRACE. As discussed in greater detail below, for purposes of TRACE, NASD also proposes to otherwise classify an unrated TRACE-eligible security as Investment Grade in certain circumstances.

Parallel provisions apply to classify TRACE-eligible securities as Non-Investment Grade securities. If rated by more than one NRSRO, and rated lower than one of the four highest generic rating categories by *all* such NRSROS, as noted above, the security will be classified for purposes of TRACE as a Non-Investment Grade security. In addition, if rated by more than one NRSRO, and rated lower than one of the four highest generic rating categories by a majority of such NRSROs, the TRACE-eligible security will be classified as a Non-Investment Grade security. Also, as discussed below, NASD is proposing that, for purposes of TRACE, NASD may otherwise classify an unrated TRACE-eligible security as a Non-Investment Grade security in some circumstances.

NASD is proposing Rule 6210(j), "split-rated," to state explicitly how NASD will classify an Investment Grade or a Non-Investment Grade TRACE-eligible security for purposes of TRACE when the security is rated by more than one NRSRO and the specific generic ratings do not fall uniformly in one generic rating category. NASD defines "split-rated" to mean "an Investment Grade or a Non-Investment Grade security that is assigned ratings by multiple NRSROs that, for an Investment Grade security, are not in the same generic Investment Grade rating category, or for a Non-Investment Grade security, are not in the same generic Non-Investment Grade rating category." The definition then sets forth principles to apply to determine the specific generic rating for purposes of TRACE. First, after NASD determines if a security is Investment Grade or Non-Investment Grade according to the principles set forth in, respectively, Rule 6210(h) and (i), NASD then disregards any rating, for an Investment Grade security, that is Non-Investment Grade, and, for a Non-Investment Grade security, that is Investment Grade. Then, with respect to an Investment Grade security, if multiple NRSROs assign ratings that are not in the same generic Investment Grade rating category, or, with respect to a Non-Investment Grade security, if multiple NRSROs assign ratings that are not in the same generic Non-Investment Grade rating category, the following three principles apply to determine the specific rating for purposes of TRACE. First, NASD will classify the TRACE-eligible security by the generic rating that a majority or, if no majority, a plurality of such NRSROs assigns the security.[21] Second, if the NRSROs assign ratings that are evenly divided between two generic rating categories, NASD will classify the security by the lower of the ratings. Third, if each of the NRSROs assigns a different rating, the TRACE-eligible security will be classified for TRACE purposes by the lower or the lowest of the ratings.[22]

When TRACE-eligible securities are not rated, NASD is proposing to "classify" the securities as Investment Grade or Non-Investment Grade, then more specifically in a generic rating category in order for them to be disseminated under the proposed dissemination rules, and any other provision of TRACE, if applicable. A determination is necessary because the rating (or, otherwise, the classification) of a TRACE-eligible security is a key dissemination criterion under proposed Rule 6250. NASD is amending Rule 6210(h) and Rule 6210(i) to provide for such classifications.

First, NASD may make a determination that, for the purposes of TRACE dissemination, an unrated TRACE-eligible security should be classified "*i.e.*, considered as though having been assigned one or more ratings reflecting a specific generic rating category—when there is evidence of the issuer's credit quality available in the bond markets. For example, NASD proposes to classify an unrated TRACE-eligible security that is newly issued if the issuer of the security has other, similar debt securities outstanding that are rated by one or more NRSROs. In such case, NASD may classify the unrated TRACE-eligible security by attributing to the security the same credit quality that is indicated by the one or more ratings assigned by the NRSROs to the issuer's rated, similar debt securities. In most cases, NASD will look to the generic rating(s) that one or more NRSROs assigned to the issuer's most recently issued and outstanding, similar debt security as the most important factor in determining the classification.[23] For example, if Issuer XPL has four debt securities outstanding that are rated AA and a fifth debt security comes to the market and begins trading without having received a rating, NASD may classify the TRACE-eligible security for purposes of TRACE as being in the same generic rating category as the four outstanding rated debt securities.

However, there may be instances when a TRACE-eligible security is unrated and there is not sufficient information available to NASD to make a determination, whether the security is newly issued or has been outstanding for some time. In such cases, NASD will classify the TRACE-eligible security as a "Non-Investment Grade" security that is rated B (or the equivalent rating of one or more other NRSROs) for purposes of dissemination. The basis for considering the TRACE-eligible security as a B-rated security (or the equivalent rating of one or more other NRSROs) is that the security will be disseminated according to the most conservative dissemination provisions, as a result of this administrative classification. NASD believes that this is a logical approach because such unrated securities often are considered distressed debt.

iv. Current Notice Provisions in Rule 6260

Rule 6260 currently requires a managing underwriter of a newly issued TRACE-eligible security to obtain and provide certain information to NASD's TRACE Operations Center. Rule 6260(b) requires the member to provide: "(1) the CUSIP number [of the new security]; (2) the issuer name; (3) the coupon rate; (4) the maturity; (5) whether Rule 144A applies; (6) a brief description of the issue; and (7) information, as determined by NASD, that is required to determine if a TRACE-eligible security must be disseminated under Rule 6250 (*e.g.*, size of issue and rating), or if any of items (2) through (7) have not been determined, such other information as NASD deems necessary." Members must provide the information before the registration statement becomes effective, or if registration is not required, the day before the securities will be priced.[24]

[21] For example, assume that four NRSROs rated XPL Security, a TRACE-eligible security. S&P rated XPL Security as "AAA," Moody's rated it as "Aaa," a third NRSRO rated it in the second highest generic rating category, and a fourth NRSRO rated it in the third highest generic rating category. The ratings of the NRSROs are "split" among the three highest generic rating categories. For purposes of TRACE, NASD will treat the security as having the highest credit quality since two of the four NRSROs (a plurality) rated the security in the highest generic rating category.

[22] For example, assume that three NRSROs rated XPL Security. S&P rated XPL Security as "B," Moody's rated it as "Caa," and a third NRSRO rated it one generic rating category lower than "Caa." The three NRSROs have assigned ratings in three different generic rating categories, so NASD will classify the security according to the lowest generic rating category.

[23] The classification of a TRACE-eligible security is an internal, administrative process of NASD. The staff will classify TRACE-eligible securities as necessary and appropriate and solely for the purpose of administering TRACE.

[24] In certain intra-day offerings described in the rule, the managing underwriter may be granted additional time to provide such notice. Rule 6260(b) provides, in pertinent part:

Continued

Providing the information within the time required is an essential step in effecting the timely reporting, and, if applicable, dissemination. Neither the member providing notice nor any other member engaged in secondary market trading in that security is able to report the transactions on time if the notice is not provided when required.

Proposed Amendments to Rule 6260

NASD is proposing to amend Rule 6260(b) to require that when NASD is notified of a new issue, the managing underwriter or a group of underwriters that is required to provide the information (*e.g.*, CUSIP, issuer name, etc.) will also be required to provide information, as determined by NASD, to implement the New Issue Aftermarket dissemination criteria of proposed Rule 6250(a)(1) and (2). For example, NASD will require a member to provide the date and time that the new TRACE-eligible security was priced. NASD is also proposing minor technical amendments to Rule 6260.

v. Miscellaneous

With the intent of providing transaction information on a more flexible basis to better meet the changing needs of the market place, NASD is proposing to delete the provisions in Rule 6250 relating to the administration, calculation, and dissemination of "market aggregate" and "last sale" data for disseminated securities, and the treatment of TRACE-eligible securities traded after the TRACE System has closed or on a non-business day. Specifically, NASD is proposing to delete current paragraph (b) or Rule 6250, entitled, "Transactions Excluded From Market Aggregate, Last Sale," paragraph (c) of Rule 6250, entitled, "Dissemination of Certain Trades Executed on A Business Day," and paragraph (d) of Rule 6250, entitled, "Dissemination of Trades Executed on Non-Business Day." NASD will establish policies for the administration, calculation and dissemination of "market aggregate" and "last sale" data that will incorporate the concepts set forth in the proposed amendments to Rule 6250 providing for both immediate and delayed dissemination of transaction information. NASD will publish information concerning the above in various media (*e.g.*, Notice to Members, TRACE User's Guide and the NASD website).

NASD will continue to treat transactions described in paragraphs (c) and (d) of Rule 6250 in the same manner as set forth in the Rule, provided the treatment is consistent with the proposed amendments to Rule 6250 requiring delayed dissemination and continues to meet the needs of the market place. The treatment of transactions executed after the TRACE System closes, and on weekends and holidays will be set forth in a published policy. Again, NASD will publish information concerning the above in various media (*e.g.*, Notice to Members, TRACE User's Guide and the NASD Web site).

vi. Implementation of Proposed Dissemination Amendments

Staged Implementation

As noted above, NASD is proposing that the dissemination provisions be implemented in two stages because NASD must make significant operational and technical enhancements to the TRACE System, to implement certain aspects of the proposal.

Stage One. As Stage One, NASD will implement the following portions of the proposed rule change: the proposed amendments to Rule 6210 (definitions); Rule 6250(b)(1)(A) and (B), requiring immediate dissemination of all Investment Grade TRACE-eligible securities transactions, except transactions in TRACE-eligible securities rated by an NRSRO or classified by NASD for purposes of TRACE as BBB (or the equivalent rating of one or more NRSROs) that occur during a New Issue Aftermarket-2; under Rule 6250(b)(1)(C)(i), all TRACE-eligible securities transactions of $1 million or less (par value) subject to dissemination, except those where the subject security does not meet the frequency standard set forth in Rule 6250(b)(1)(C)(ii);[25] Rule 6250(b)(1)(C)(ii), requiring immediate dissemination of all transactions in TRACE-eligible securities rated by an NRSRO or classified by NASD for purposes of TRACE as BB (or the equivalent rating of one or more NRSROs) or lower that exceed $1 million (par value) and meet the frequency test set forth in this subsection; Rule 6250(c), prohibiting the dissemination of Rule 144A transactions; and Rule 6260, providing for new issue notifications. In addition, Stage One will include the proposed deletions of current Rule 6250(a) through (d). Stage One will become effective on September 1, 2004.

Stage Two. Stage Two will consist of the implementation of proposed Rule 6250(a), providing for delayed dissemination of transaction information for transactions occurring during a New Issue Aftermarket-2 or New Issue Aftermarket-10, as defined above; the portion of proposed Rule 6250(b)(1)(C)(i) not fully implemented in Stage One;[26] and proposed Rule 6250(b)(2), providing for delayed dissemination of transaction information in certain transactions in TRACE-eligible securities rated by an NRSRO or classified by NASD for purposes of TRACE as BB (or the equivalent rating of one or more NRSROs) or lower.

NASD is implementing these provisions as Stage Two, because the provisions cannot become effective until NASD has enhanced the TRACE System. By phasing the proposed rules in using two stages, NASD will not delay the implementation of nearly all of the dissemination provisions in Rule 6250(b)(1), which will have the greatest impact on increasing transparency. Stage Two will become effective on December 1, 2004.

If an issuer notifies a managing underwriter, or the issuer and the managing underwriter determine, that the TRACE-eligible securities of the issuer shall be priced, offered and sold the same business day in an intra-day offering under Rule 415 of the Securities Act of 1933 or Rule 144A of the Securities Act of 1933, the managing underwriter shall provide the information not later than 5:00 p.m. on the day that the securities are priced and offered, provided that if such securities are priced and offered on or after 5:00 p.m., the managing underwriter shall provide the information not later than 5:00 p.m. on the next business day.

All references are to Eastern Time.

[25] Rule 6250(b)(1)(C)(i) provides for the immediate dissemination of transactions in TRACE-eligible securities that are rated by an NRSRO or classified by NASD for purposes of TRACE as BB (or the equivalent rating of one or more NRSROs) or lower and are executed other than during the New Issue Aftermarket-10, if the size of the transaction is $1 million or less. NASD intends to partially implement this provision in Stage One. In Stage One, NASD proposes to disseminate immediately such transactions in any security for which the larger transactions (*i.e.*, "$1 million plus" transactions) are also disseminated in Stage One (*i.e.*, securities that are traded an average of one or more times per day, as more fully set forth in Rule 6250(b)(1)(C)(ii)). Securities transactions described in Rule 6250(b)(1)(C)(i) that would otherwise be subject to immediate dissemination, but occurred in a security that was traded an average of less than one time per day and is subject to the delayed dissemination provisions in Rule 6250(b)(2)(A)(ii) or Rule 6250(b)(2)(B)(ii), will be disseminated in Stage Two, when delayed dissemination is functional and all transactions in the security will be disseminated. For example, XPL Security is rated BB (or the equivalent rating of one or more NRSROs) and trades an average of less than one time per day. Under Rule 6250(b)(1)(C)(i), a transaction in XPL Security for $100,000 would be disseminated immediately if not for the above approach to implementation, but a transaction on the same day in XPL Security for $2 million would not be disseminated at any time during Stage One. NASD intends to withhold the dissemination of the $100,000 transaction in XPL Security during Stage One because it believes that all market participants will be best served and get a more complete and accurate indication of price when transactions of all sizes in a security are disseminated.

[26] Id.

Planned Review Nine Months After Stage Two Implementation

Finally, as discussed previously, NASD intends to continue to review the trading and the liquidity in TRACE-eligible securities during the implementation of Stages One and Two of the proposed rule change. As part of this review process, not later than nine months from the implementation of Stage Two, NASD will ask the BTRC to reconvene to review the rule. Based on the reviews, the BTRC and NASD staff will make recommendations to the NASD Board. The NASD Board will review the recommendations and will decide whether to amend the dissemination provisions then in effect.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[27] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will provide NASD with heightened capabilities to regulate and provide surveillance of the debt securities markets to prevent fraudulent and manipulative acts and practices, and will improve transparency in the debt markets for the benefit of customers and other market participants in furtherance of the public interest and for the protection of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–094 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–094. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–094 and should be submitted on or before July 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15050 Filed 7–1–04; 8:45 am]

BILLING CODE 8010–01–P

[27] 15 U.S.C. 78o–3(b)(6).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49913; File No. SR–NSX–2004–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Stock Exchange To Extend an Existing Pilot Rule That Stipulates the Price Increment by Which Designated Dealers Must Better Customer Orders

June 24, 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 June 17, 2004, the National Stock Exchange ("Exchange")[3] filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I and II, below, which Items have been prepared by the Exchange. The Exchange has filed this proposed rule change pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b-4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the termination date of pilot Exchange Rule 12.6, Interpretation .02, which requires an Exchange Designated Dealer ("Specialist") to better the price of a customer limit order held by the Specialist if the Specialist decides to trade with an incoming market or marketable limit order.[6] Pursuant to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The Exchange recently changed its name and was formerly known as The Cincinnati Stock Exchange or "CSE". *See* Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (SR–CSE–2003–12).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b-4(f)(6).

[6] *See* Securities Exchange Act Release Nos. 46274 (July 29, 2002), 67 FR 50743 (August 5, 2002) (establishing pilot); 46554 (September 25, 2002), 67 FR 6276 (October 4, 2002) (first extension of pilot);

Continued

Interpretation .02(a), the Specialist is required to better a customer limit order at the national best bid or offer ("NBBO") by at least one penny. Pursuant to Interpretation .02(b), if the customer limit order is outside the current NBBO, the Specialist is required to better the customer limit order by at least the nearest penny increment.

The Exchange seeks to extend the pilot through June 30, 2005.[7] The Exchange does not seek to make substantive changes to the pilot at this time. The text of the proposed rule change is available at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend its pilot Interpretation .02 under Exchange Rule 12.6,[8] which relates to the trading of securities in subpenny increments.[9] Interpretation .02 of Exchange Rule 12.6 requires a Specialist to better the price of a customer limit order held by the Specialist by at least one penny (for those customer limit orders at the NBBO) or at least the nearest penny increment (for those customer limit orders that are not at the NBBO) if the Specialist determines to trade with an incoming market or marketable limit order.[10]

The purpose of the Interpretation is to prevent a Specialist from taking unfair advantage of customer limit orders held by that Specialist by trading with incoming market or marketable limit orders ahead of such orders. Although a Specialist may price-improve incoming orders by providing prices superior to that of the customer limit orders that he or she holds, customers should have a reasonable expectation to have their orders filled at their limit order prices. This expectation should be reflected in reasonable access to incoming contra-side order flow, unless other customers place better-priced limit orders with the Specialist or the Specialist materially improves upon the prices of the customer limit order that he or she holds (not the customers' quoted prices).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act[11] in general and Section 6(b)(5) of the Act[12] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that the proposed rule change is immediately effective pursuant to section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder[14] because it: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if

46929 (November 27, 2002), 67 FR 72711 (December 6, 2002) (second extension of pilot); 47941 (May 29, 2003), 68 FR 33751 (June 5, 2003) (third extension of pilot).

[7] The Exchange understands that the Commission's proposed Regulation NMS may have an impact on this pilot program. Accordingly, the Exchange has stated that it will undertake to work with the Commission to ensure that the pilot program would be consistent with the rules and regulations contained in Regulation NMS, when it is adopted.

[8] Exchange Rule 12.6 provides, in pertinent part, that no member shall: (i) personally buy or initiate the purchase of any security traded on the Exchange for its own account or for any account in which it or any associated person of the member is directly or indirectly interested while such member holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to sell such security in the unit of trading for a customer.

[9] In connection with pilot Interpretation .02, the Exchange also has received a Commission exemption from Rules 11Ac–1, 11Ac1–2, and 11Ac1–4 under the Act, 17 CFR 240.11Ac–1, 240.11Ac1–2, and 240.11Ac1–4, that allows Exchange members to display their quotes for Nasdaq National Market securities in whole penny increments while trading in subpenny increments. *See* letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation ("Division"), Commission, to Jeffrey T. Brown, Senior Vice President and General Counsel, Exchange, dated July 26, 2002 (granting initial exemption) in response to letter from Jeffrey T. Brown, Senior Vice President and General Counsel, the Exchange, to Annette Nazareth, Director, Division, Commission, dated November 27, 2001 (requesting initial exemption); letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jeffrey T. Brown, Senior Vice President and General Counsel, Exchange, dated September 25, 2002 (amending and extending initial exemption) in response to letter from Jeffrey T. Brown, Senior Vice President and General Counsel, Exchange, to Annette Nazareth, Director, Division, Commission, dated September 18, 2002 (requesting first extension); letter from Alden S. Adkins, Associate Director, Division, Commission, to Jeffrey T. Brown, Senior Vice President and General Counsel, Exchange, dated November 27, 2002 (granting second extension) in response to letter from Jeffrey T. Brown, Senior Vice President and General Counsel, Exchange, to Annette Nazareth, Director, Division, Commission, dated November 20, 2002 (requesting second extension); letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jeffrey T. Brown, Senior Vice President and General Counsel, Exchange, dated May 29, 2003 (granting third extension) in response to letter from Jeffrey T. Brown, Senior Vice President and General Counsel, Exchange, to Annette Nazareth, Director, Division, Commission, dated May 19, 2003 (requesting third extension); letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jennifer M. Lamie, Assistant General Counsel and Secretary, Exchange, dated December 1, 2003 (granting fourth extension) in response to letter from Jennifer M. Lamie, Assistant General Counsel and Secretary, Exchange, to Annette Nazareth, Director, Division, Commission, dated November 21, 2003 (requesting fourth extension). In conjunction with the proposed rule change, the Exchange has requested that the Commission extend its exemption from Rules 11Ac1–1, 11Ac1–2, and 11Ac1–4 under the Act to allow subpenny quotations to be rounded down (for buy orders) and rounded up (for sell orders) to the nearest penny for quote dissemination for Nasdaq and listed securities. *See* letter from James C. Yong, Senior Vice President, Regulation and General Counsel, Exchange, to Annette Nazareth, Director, Division, Commission, dated May 20, 2004.

[10] Interpretation .01 to Rule 12.6 provides that "[i]f a Designated Dealer holds for execution on the Exchange a customer buy order and a customer sell order that can be crossed, the Designated Dealer shall cross them without interpositioning itself as a dealer."

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

consistent with protection of investors and the public interest.[15]

The Exchange has requested that the Commission waive the 30-day operative date in this case, and the Commission hereby grants this request.[16] The Commission believes that waiving the 30-day pre-operative period is consistent with the protection of investors and the public interest because it will allow the pilot to continue uninterrupted. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include SR–NSX–2004–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to SR–NSX–2004–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to SR–NSX–2004–04 and should be submitted on or before July 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15082 Filed 7–1–04; 8:45 am]

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[15] In addition, to submit a filing pursuant to Rule 19b–4(f)(6) under the Act, paragraph (f)(6)(iii) thereof also requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange complied with this requirement. *See* letter from James C. Yong, Senior Vice President, Regulation and General Counsel, Exchange, to Nancy Sanow, Assistant Director, Division, Commission, dated May 20, 2004.

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49917, File No. SR–NYSE–2004–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc., to Change Its Original and Continued Quantitative Listing Standards

June 25, 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 April 13, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 20, 2004, NYSE submitted 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing to amend Sections 102.01C, 103.01B, 802.01B, and 802.01C of the NYSE's Listed Company Manual regarding the minimum numerical original and continued listing standards. Proposed new language is *italicized*; deletions are bracketed.[4]

* * * * *

102.00 Domestic Companies

102.01C A Company Must Meet One of the Following Financial Standards

(I) *Earnings Test* (1) Pre-tax earnings from continuing operations and after minority interest, amortization and equity in the earnings or losses of investees as adjusted [(E)] for items specified in (2)(a) through (i) below [(F)] must total at least[.] [$2,500,000 in the latest fiscal year together with $2,000,000 in each of the preceding two years; or $6,500,000] *$10,000,000* in the aggregate for the last three fiscal years together with a minimum of $[4,5]*2,000,000* in the *two* most recent fiscal years,] and positive amounts [for] *in all* [each of the preceding two] *three* years.

(2) Adjustments *(E)(F)* that must be included in the calculation of the amounts required in paragraph (1) are as follows:

(a) Application of Use of Proceeds. If a company is in registration with the SEC and is in the process of an equity offering, adjustments should be made to reflect the net proceeds of that offering, and the specified intended application(s) of such proceeds to:

(i) Pay off existing debt. The adjustment will include elimination of the actual historical interest on debt being retired with offering proceeds of all relevant periods. If the event giving rise to the adjustment occurred during a time-period such that pro forma amounts are not set forth in the SEC registration statement (typically, the pro

[3] *See* Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Divison of Market Regulation ("Division"), Commission, dated May 19, 2004 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] The NYSE has agreed to amend the proposed rule change to make technical corrections to the proposed rule text. Telephone conversation between Annemarie Tierney, Assistant General Counsel, NYSE, and Susie Cho, Special Counsel, Division, Commission, on May 4, 2004.

forma effect of repayment of debt will be provided in the current registration statement only with respect to the last fiscal year plus any interim period in accordance with SEC rules), the company must prepare the relevant adjusted financial data to reflect the adjustment to its historical financial data, and its outside audit firm must provide a report of having applied agreed-upon procedures with respect to such adjustments. Such report must be prepared in accordance with the standards established by the American Institute of Certified Public Accountants.

(ii) Fund an acquisition:

(1) The adjustments will include those applicable with respect to acquisition(s) to be funded with the proceeds. Adjustments will be made that are disclosed as such in accordance with Rule 3–05 "Financial Statements of Business Acquired or to be Acquired" and Article 11 of Regulation S–X. Adjustments will be made for all the relevant periods for those acquisitions for which historical financial information of the acquiree is required to be disclosed in the SEC registration statement; and

(2) Adjustments applicable to any period for which pro forma numbers are not set forth in the registration statement shall be accompanied by the relevant adjusted financial data to combine the historical results of the acquiree (or relevant portion thereof) and acquirer, as disclosed in the company's SEC filing. Under SEC rules, the number of periods disclosed depends upon the significance level of the acquiree to the acquirer. The adjustments will include those necessary to reflect (a) the allocation of the purchase price, including adjusting assets and liabilities of the acquiree to fair value recognizing any intangibles (and associated amortization and depreciation), and (b) the effects of additional financing to complete the acquisition. The company must prepare the relevant adjusted financial data to reflect the adjustment to its historical financial data, and its outside audit firm must provide a report of having applied agreed-upon procedures with respect to such adjustments. Such report must be prepared in accordance with the standards established by the American Institute of Certified Public Accountants.

(b) Acquisitions and Dispositions: In instances other than acquisitions (and related dispositions of part of the acquiree) funded with the use of proceeds, adjustments will be made for those acquisitions and dispositions that are disclosed as such in a company's financial statements in accordance with Rule 3–05 "Financial Statements of Business Acquired or to be Acquired" and Article 11 of Regulation S–X. If the disclosure does not specify pre-tax earnings from continuing operations, minority interest, and equity in the earnings or losses of investees, then such data must be prepared by the company's outside audit firm for the Exchange's consideration. In this regard, the audit firm would have to issue an independent accountant's report on applying agreed-upon procedures in accordance with the standards established by the American Institute of Certified Public Accountants.

(c) Exclusion of Merger or Acquisition Related Costs Recorded under Pooling of Interests;

(d) Exclusion of Charges or Income Specifically Disclosed in the Applicant's SEC Filing for the Following:

(i) In connection with exiting an activity for the following:

(1) Costs of severance and termination benefits

(2) Costs and associated revenues and expenses associated with the elimination and reduction of product lines

(3) Costs to consolidate or re-locate plant and office facilities

(4) Loss or gain on disposal of long-lived assets

(ii) Environmental clean-up costs

(iii) Litigation settlements;

(e) Exclusion of Impairment Charges on Long-lived Assets (goodwill, property, plant, and equipment, and other long-lived assets);

(f) Exclusion of Gains or Losses Associated with Sales of a Subsidiary's or Investee's Stock;

(g) Exclusion of In-Process Purchased Research and Development Charges;

(h) Regulation S–X Article 11 Adjustments; Adjustments will include those contained in a company's pro forma financial statements provided in a current filing with the SEC pursuant to SEC rules and regulations governing Article 11 "Pro forma information of Regulation S–X Part 210—Form and Content of and Requirements for Financial Statements";

(i) Exclusion of the Cumulative Effect of Adoption of New Accounting Standards (APB Opinion No. 20) *OR*

(II) *Valuation/Revenue Test*

Companies listing under this standard may satisfy either (a) the Valuation/Revenue with Cash Flow Test or (b) the Pure Valuation/Revenue Test.

(a) Valuation/Revenue with Cash Flow Test—[A Company with]

(1) [not less than] *at least* $500,000,000 *in global* market capitalization, [and]

(2) *at least* $100,000,000 in revenues during the most recent 12 month period, [must] *and*

(3) *[*demonstrate from the operating activity section of its cash flow statement that its cash flow, which represents net income adjusted to (a) reconcile such amounts to cash provided by operating activities, and (b) exclude changes in operating assets and liabilities, is] at least $25,000,000 [in the] aggregate *cash flows* for the last three fiscal years [and each year is reported as a] *with* positive amounts *in all three years, as* adjusted [(E)(F)] pursuant to Para. 102.01C (I)(2)(a) and (b), as applicable.

A Company must demonstrate cash flow based on the operating activity section of its cash flow statement. Cash flow represents net income adjusted to (a) reconcile such amounts to cash provided by operating activities, and (b) exclude changes in operating assets and liabilities. With respect to reconciling amounts pursuant to this Paragraph, all such amounts are limited to the amount included in the company's income statement.

(b) Pure Valuation/Revenue Test—

(1) at least $750,000,000 in global market capitalization, and

(2) at least $75,000,000 in revenues during the most recent fiscal year. In the case of companies listing in connection with an IPO, the company's underwriter (or, in the case of a spin-off, the parent company's investment banker or other financial advisor) must provide a written representation that demonstrates the company's ability to meet the $750,000,000 global market capitalization requirement based upon the completion of the offering (or distribution). For all other companies, market capitalization valuation will be determined over a six-month average.

[OR

(III) For companies with not less than $1 billion in total worldwide market capitalization and with not less than $100 million revenues in the recent fiscal year, there are no additional financial requirements. For such companies listing in connection with an IPO, the market capitalization valuation must be demonstrated by written representation from the underwriter (or, in the case of a spin-off, by a written representation from the parent company's investment banker or other financial advisor) of the total market capitalization of the company upon completion of the offering (or distribution). For all other such companies, the market capitalization valuation will be determined over a six-month average.]

OR

(III) Affiliated Company Test

(1) at least $500,000,000 in global market capitalization;

(2) at least 12 months of operating history (although a company is not required to have been a separate corporate entity for such period); and

(3) the company's parent or affiliated company is a listed company in good standing (as evidenced by written representation from the company or its financial advisor excluding that portion of the balance sheet attributable to the new entity); and

(4) the company's parent or affiliated company retains control of the entity or is under common control with the entity.

"Control" for purposes of the Affiliated Company Test will mean having the ability to exercise significant influence over the operating and financial policies of the listing company, and will be presumed to exist where the parent or affiliated company holds 20% or more of the listing company's voting stock directly or indirectly. Other indicia that may be taken into account when determining whether control exists include board representation, participation in policy making processes, material intercompany transactions, interchange of managerial personnel, and technological dependency. The Affiliated Company Test is taken from and intended to be consistent with generally accepted accounting principles regarding use of the equity method of accounting for an investment in common stock.

(E) Only adjustments arising from events specifically so indicated in the company's SEC filing(s) as to both categorization and amount can and must be made. Any such adjustment applies only in the year in which the event occurred except with regard to the use of proceeds or acquisitions and dispositions. Any company for which the Exchange relies on adjustments in granting clearance must include all relevant adjusted financial data in its listing application as specified in Para. 702.04, and disclose the use of adjustments by including a statement in a press release (i) that additional information is available upon which the NYSE relied to list the company and is included in the listing application and (ii) that such information is available to the public upon request.

(F) [The above-referenced adjustments are measured and recognized] *Interested parties should apply the list of adjustments* in accordance with any relevant accounting literature, such as that published by the Financial Accounting Standards Board ("FASB"), the Accounting Principles Board ("APB"), the Emerging Issues Task Force ("EITF"), the American Institute of Certified Public Accountants ("AICPA"), and the SEC. Any literature is intended to guide issuers and investors regarding the affected adjustment listed. If successor interpretations (or guidelines) are published with respect to any particular adjustment, the most recent relevant interpretations (or guidelines) should be consulted.

* * * * *

[(IV) Affiliated Company Standard

(1) Market capitalization of $500,000,000 million or greater (as evidenced by written representation from the underwriter, company, or its investment advisor);

(2) Minimum of 12 months of operations (although it is not required to have been a separate corporate entity for such period);

(1) Parent or affiliated company is a listed company in good standing (as evidenced by written representation from the company or its financial advisor excluding that portion of the balance sheet attributable to the new entity); and

(2) Parent/affiliated company retains control* of the entity or is under common control* with the entity.

"Control" for these purposes will mean the ability to exercise significant influence over operating and financial policies, and will be presumed to exist when the parent involved holds directly or indirectly 20% or more of the entity's voting stock. Other indicia that may be taken into account for this purpose include board representation, participation in policy making processes, material intercompany transactions, interchange of managerial personnel, and technological dependency. This test is taken from and intended to be consistent with generally accepted accounting principles regarding use of the equity method of accounting for an investment in common stock.]

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103.00 Non-U.S. Companies

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103.01 Minimum Numerical Standards "Non-U.S. Companies" Equity Listings Distribution

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103.01B A Company Must Meet One of the Following Financial Standards

(I) *Earnings Test*

(1) Pre-tax earnings from continuing operations and after minority interest, amortization and equity in the earnings or losses of investees adjusted [(C)(D)] for items specified in para. 102.01C(I)(2)(a) through (i) above, and 103.01B(I)(2) below, must total at least[:] $100,000,000 in the aggregate for the last three fiscal years [together] with a minimum of $25,000,000 in each of the most recent two *fiscal* years.

(2) Additional Adjustment *(C)(D)* Available for Foreign Currency Devaluation. Non-operating adjustments when associated with translation adjustments representing a significant devaluation of a country's currency (*e.g.*, the currency of a company's country of domicile devalues by more than 10 percent against the U.S. dollar within a six-month period). Adjustments may not include those associated with normal currency gains or losses.

(3) Reconciliation to U.S. GAAP of the third year back would only be required if the Exchange determines that reconciliation is necessary to demonstrate that the aggregate $100,000,000 threshold is satisfied.

OR

(II) *Valuation/Revenue Test*

Companies listing under this standard may satisfy either (a) the Valuation/Revenue with Cash Flow Test or (b) the Pure Valuation/Revenue Test.

(a) Valuation/Revenue with Cash Flow Test—[A Company with]

(1) [not less than] *at least* $500,000,000 *in global* market capitalization, [and]

(2) *at least* $100,000,000 *in* revenues during the most recent 12 month period, [must] *and*

(3) [demonstrate from the operating activity section of its cash flow statement that its operating cash flow excluding changes in operating assets and liabilities is] at least $100,000,000 [in the] aggregate *cash flows* for the last three fiscal years where each of the two most recent years is reported at a minimum of $25,000,000, [as] adjusted *in accordance with* (C)(D) [for] Para. 102.01C (I)(2) (a) and (b).

A Company must demonstrate cash flow based on the operating activity section of its cash flow statement. Cash flow represents net income adjusted to (a) reconcile such amounts to cash provided by operating activities, and (b) exclude changes in operating assets and liabilities. With respect to reconciling amounts pursuant to this Paragraph, all such amounts are limited to the amount included in the company's income statement.

Reconciliation to U.S. GAAP of the third *fiscal* year back would only be required if the Exchange determines that reconciliation is necessary to demonstrate that the [aggregate]

$100,000,000 *aggregate cash flow* threshold is satisfied.

(b) Pure Valuation/Revenue Test—

(1) *at least $750,000,000 in global market capitalization, and*

(2) *at least $75,000,000 in revenues during the most recent fiscal year. In the case of companies listing in connection with an IPO, the company's underwriter (or, in the case of a spin-off, the parent company's investment banker or other financial advisor) must provide a written representation that demonstrates the company's ability to meet the $750,000,000 global market capitalization requirement upon completion of the offering (or distribution). For all other companies, market capitalization valuation will be determined over a six-month average.*

[OR

(III) For companies with not less than $1 billion in total worldwide market capitalization and with not less than $100 million revenues in the recent fiscal year, there are no additional financial requirements. For such companies listing in connection with an IPO, the market capitalization valuation must be demonstrated by a written representation from the underwriter (or, in the case of a spin-off, by a written representation from the parent company's investment banker, other financial advisor or transfer agent) of the total market capitalization of the company upon completion of the offering (or distribution). For all other such companies, the market capitalization valuation will be determined over a six-month average.]

OR

(III) Affiliated Company Test

(1) *at least $500,000,000 in global market capitalization;*

(2) *at least 12 months of operating history (although a company is not required to have been a separate corporate entity for such period); and*

(3) *the company's parent or affiliated company is a listed company in good standing (as evidenced by written representation from the company or its financial advisor excluding that portion of the balance sheet attributable to the new entity); and*

(4) *the company's parent or affiliated company retains control of the entity or is under common control with the entity.*

"Control" for purposes of the Affiliated Company Test will mean having the ability to exercise significant influence over the operating and financial policies of the listing company, and will be presumed to exist where the parent or affiliated company holds 20% or more of the listing company's voting stock directly or indirectly. Other indicia that may be taken into account when determining whether control exists include board representation, participation in policy making processes, material intercompany transactions, interchange of managerial personnel, and technological dependency. The Affiliated Company Test is taken from and intended to be consistent with generally accepted accounting principles regarding use of the equity method of accounting for an investment in common stock.

(C) Only adjustments arising from events specifically so indicated in the company's SEC filing(s) as to both categorization and amount can and must be made. Any such adjustments apply only in the year in which the event occurred except with regard to the use of proceeds or acquisitions and dispositions. Any company for which the Exchange relies on adjustments in granting clearance must include all relevant adjusted financial data in its listing application as specified in Para. 702.04, and disclose the use of adjustments by including a statement in a press release (i) that additional information is available upon which the NYSE relied to list the company and is included in the listing application and (ii) that such information is available to the public upon request.

(D) Interested parties should apply the list of adjustments in accordance with any relevant accounting literature, such as that published by the Financial Accounting Standards Board ("FASB), the Accounting Principles Board ("APB"), the Emerging Issues Task Force ("EITF"), the American Institute of Certified Public Accountants ("AICPA"), and the SEC. Any literature is intended to guide issuers and investors regarding the affected adjustment listed. If successor interpretations (or guidelines) are published with respect to any particular adjustment, the most recent relevant interpretations (or guidelines) should be consulted.

[(IV) Affiliated Company Standard

(1) Market capitalization of $500 million or greater (as evidenced by written representation from the underwriter, company, or its investment advisor);

(2) Minimum of 12 months of operations (although it is not required to have been a separate corporate entity for such period);

(3) Parent or affiliated company is a listed company in good standing (as evidenced by written representation from the company or its financial advisor excluding that portion of the balance sheet attributable to the new entity); and

(4) Parent/affiliated company retains control* of the entity or is under common control* with the entity.

*"Control" for these purposes will mean the ability to exercise significant influence over operating and financial policies, and will be presumed to exist when the parent involved holds directly or indirectly 20% or more of the entity's voting stock. Other indicia that may be taken into account for this purpose include board representation, participation in policymaking processes, material intercompany transactions, interchange of managerial personnel, and technological dependency. This test is taken from and intended to be consistent with generally accepted accounting principles regarding use of the equity method of accounting for an investment in common stock.]

* * * * *

802.00 Continued Listing

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802.01 Continued Listing Criteria

The Exchange would normally give consideration to delisting a security either a domestic or non-U.S. issuer when:

* * * * *

802.01B Numerical Criteria for Capital or Common Stock

[If] *A*[a] company *that* falls below [any of the following] *the* criteria *applicable to it* [, it] is subject to the procedures outlined in Paras. 802.02 and 802.03[:].

(I) A company that qualified to list under the Earnings Test set out in Para. 102.01C(I) or in Para. 103.01B(I) will be considered to be below compliance standards if:

(i) [A]average global market capitalization over a consecutive 30 trading-day period is less than [$50,000,000] *$75,000,000* and, *at the same time,* total stockholders' equity is less than [$50,000,000] *$75,000,000* (C); or

(ii) [A]average global market capitalization over a consecutive 30 trading-day period is less than [$15,000,000; or] *$25,000,000.*

(II) A company that qualified to list under the Valuation/Revenue with Cash Flow Test set out in Para. 102.01C(II)(a) or Para. 103.01B(II)(a) will be considered to be below compliance standards if:

(i) Average global market capitalization over a consecutive 30 trading-day period is less than $250,000,000 and, at the same time, total revenues are less than $20,000,000

over the last 12 months (unless the company qualifies as an original listing under one of the other original listing standards) (D) ; or

(ii) Average global market capitalization over a consecutive 30 trading—day period is less than $75,000,000.

[(iii) For companies that qualified for original listing under the "global market capitalization" standard:] *(III) A company that qualified to list under the Pure Valuation/Revenue Test set out in Para. 102.01C(II)(b) or Para. 103.01B(II)(b) will be considered to be below compliance standards if:*

(i) [A]average global market capitalization over a consecutive 30 trading-day period is less than [$500,000,000] *$375,000,000* and, *at the same time,* total revenues are less than [$20,000,000] *$15,000,000* over the last 12 months (unless the [resultant entity] *company* qualifies as an original listing under one of the other original listing standards) (D); or

(ii) average global market capitalization over a consecutive 30 trading-day period is less than $100,000,000.

(IV) A company that qualified to list under the Affiliated Company Test set out in Para. 102.01C(III) or Para. 103.01B(III) is not subject to any continued numerical standards unless:

(i) *the listed company's parent/affiliated company ceases to control the listed company, or*

(ii) *the listed company's parent/affiliated company itself falls below the continued listing standards described to the parent/affiliated company.*

In such case, the listed company that qualified to list under the Affiliated Company Test will be considered to be below compliance standards at any time that:

(i) *average global market capitalization over a consecutive 30 trading-day period is less than $75,000,000 and, at the same time, total stockholders' equity is less than $75,000,000 (C); or*

(ii) *average global market capitalization over a consecutive 30 trading-day period is less than $25,000,000.*

When applying the market capitalization test in any of the above [three] *four* standards, the Exchange will generally look to the total common stock outstanding (excluding treasury shares) as well as any common stock that would be issued upon conversion of another outstanding equity security. The Exchange deems these securities to be reflected in market value to such an extent that the security is a "substantial equivalent" of common stock. In this regard, the Exchange will only consider securities (1) publicly traded (or quoted), or (2) convertible into a publicly traded (or quoted) security. For partnerships, the Exchange will analyze the creation of the current capital structure to determine whether it is appropriate to include other publicly traded securities in the calculation.

[Affiliated Companies—Will not be subject to the $50,000,000 average global market capitalization and stockholders' equity test unless the parent/affiliated company no longer controls the entity or such parent/affiliated company itself falls below the continued listing standards described in this section.]

Funds, REITs and Limited Partnerships [—] will be subject to immediate suspension and delisting procedures if *[(1)]* the average market capitalization *of the entity* over 30 consecutive trading days is below [$15,000,000] *$25,000,000* [or (2)]. *In addition, [*in the case of] a Fund [,] *is subject to immediate suspension and delisting if* it ceases to maintain its closed-end status. [, and in the case of a] *A* REIT *is subject to immediate suspension and delisting if[,]* it fails to maintain its REIT status (unless the resultant entity qualifies for an original listing as a corporation).

The Exchange will notify the Fund, REIT or limited partnership if the average market capitalization falls below [$25,000,000] *$35,000,000* and *will* advise the Fund, REIT or limited partnership of the delisting standard. Funds, REITs and limited partnerships are not subject to the procedures outlined in Paras. 802.02 and 802.03.

Bonds [—] *will be subject to immediate suspension and delisting procedures if: (i)* [.] [T]*t*he aggregate market value or principal amount of publicly-held bonds is less than $1,000,000, *or*

(ii) [.] [T]*t*he issuer is not able to meet its obligations on the listed debt securities. *Bonds are not subject to the procedures outlined in Paras. 802.02 and 802.03.* Preferred Stock, Guaranteed Railroad Stock and Similar Issues[-]*will be subject to immediate suspension and delisting procedures if:*

(i) [.] *t*he [A]aggregate market value of publicly-held shares is less than $2,000,000, *or*

(ii) [.] the number of [P]publicly-held shares is less than 100,000. *These types of securities are not subject to the procedures outlined in Paras. 802.02 and 802.03.*

(C) *In order* [T]*t*o be considered in conformity with continued listing standards pursuant to Paras. 802.02 and 802.03, a company that is determined to be below *compliance under* this continued listing criterion must do one of the following:

(i) [R]reestablish both its market capitalization and its stockholders' equity to the [$50,000,000] *$75,000,000* level, or

(ii) [A]*a*chieve average global market capitalization over a consecutive 30 trading-day period of at least [$100,000,000] *$150,000,000*, or

(iii) [A]*a*chieve average global market capitalization over a consecutive 30 trading-day period of [$60,000,000] *$90,000,000*, with either (x) stockholders' equity of at least [$40,000,000] *$60,000,000*, or (y) an increase in stockholders' equity of at least [$40,000,000] *$60,000,000* since the company was notified by the Exchange that it was below continued listing standards.

(D) *In order to be deemed in conformity with continued listing standards pursuant to paras. 802.02 and 802.03,* [A]*a* company that is determined to be below *compliance under* this continued listing criterion must *either:*

(*i*) reestablish both its market capitalization and its revenues *to the applicable amounts* [to be considered in conformity with continued listing standards pursuant to paras. 802.02 and 802.03], *or*

(*ii*) *qualify as an original listing under any of the original listing standards.*

802.01C Price Criteria *for Capital or Common Stock*

A Company will be considered to be below compliance standards if the [A]average closing price of a security is less than $1.00 over a consecutive 30-trading-day period (E).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing amendments to certain of its minimum numerical standards for the listing and continued listing of equity securities on the NYSE. On January 29, 2004, the Commission approved these proposed amendments sought by the NYSE on a pilot program basis (the "Pilot Program").[5] The Pilot Program provided a transition period for companies that were below compliance under the previous continued listing standards at the time the Pilot Program was approved, granting them an opportunity to present an additional business plan advising the Exchange of definitive action the company has taken, or is taking, that would bring the company into conformity with the Pilot Program requirements within 12 months of the end of their previous plan. No transition period was provided, however, for companies that were in compliance with the previous standards but not in compliance with the Pilot Program standards at the time the Pilot Program was approved.

At the Exchange's request, the Commission approved the Pilot Program on an accelerated basis. The Exchange now believes that there was no opportunity for listed companies to review and comment on the Pilot Program requirements prior to the date compliance was required. The NYSE notes that a number of the listed companies that did not comply with the Pilot Program standards as of the date of approval expressed dismay at the automatic application of the new standards with no public notice.[6] In order to address these concerns, the Exchange suspended the portions of the Pilot Program relating to the continued listing standards of Section 802.01B of the NYSE's Listed Company Manual.[7] In File No. SR–NYSE–2004–15, the Exchange noted its intention to file with the Commission a proposed rule change, without any request for accelerated approval, allowing a full notice-and-comment period regarding the requirements of the Pilot Program relating to Section 802.01B.[8] File No. SR–NYSE–2004–15 did not, however, amend the Pilot Program with respect to Sections 102.01C and 103.01B of the NYSE's Listed Company Manual concerning original minimum listing standards or the Pilot Program's non-substantive change to the language of Section 802.01C.[9]

The Exchange now seeks permanent approval for the Pilot Program currently in effect with respect to the Exchange's original minimum listing standards and approval of the continued minimum listing standards as initially proposed in File No. SR–NYSE–2003–43. The Exchange represents that it maintains an ongoing dialog with knowledgeable practitioners at investment banks, broker-dealers, and venture capital firms, and adjusts its listing standards periodically to ensure that the standards recognize and reflect current market conditions and to allow the Exchange to continue to attract quality companies. The Exchange represents, furthermore, that such changes are proposed only after detailed analysis by Exchange staff of how the proposed standards would affect the NYSE list. The NYSE asserts that the proposed amendments will strengthen certain aspects of the minimum original and continued listing standards, while modestly easing the pre-Pilot "Program Market-Cap/Revenue Test" to enable the NYSE to list somewhat younger companies that still meet substantial quantitative thresholds over their operating history. According to the NYSE, Exchange staff monitored the modest number of companies over the last two years that would have met the "Market-Cap/Revenue Test" as the Exchange proposes to modify it and found that those companies have performed to a standard that would be appropriate for inclusion on the NYSE list.

Prior to the Pilot Program, Section 102.01C of the Listed Company Manual provided that a company must meet one of four specified financial standards in order to qualify to have its equity securities listed. The Exchange is proposing permanent approval of amendments to three of these four standards that have been in effect under the Pilot Program.[10] The Exchange is also proposing permanent approval of amendments to Section 103.01B(III), which provides a corresponding numerical standard applicable to international companies and have also been in effect under the Pilot Program.

Prior to the Pilot Program, Section 102.01C(I) required that a company demonstrate pre-tax earnings of $6.5 million in aggregate for the last three fiscal years, with either a minimum of: (a) $2.5 million in earnings in the most recent fiscal year and $2 million in each of the preceding two years; or (b) $4.5 million in earnings in the most recent fiscal year, with positive earnings in each of the preceding two years. Pursuant to the Pilot Program, the "Earnings Test" requires that companies demonstrate pre-tax earnings of $10 million in aggregate for the last three fiscal years. It also requires that the company demonstrate positive results in all three of the years tested with a minimum of $2.0 million in earnings in each of the preceding two years. The Exchange believes that these changes strengthen the "Earnings Test" standard and also simplify it by eliminating the current two-tiered structure.

Prior to the Pilot Program, Section 102.01C(II) required that a company demonstrate market capitalization of at least $500 million and revenues of at least $100 million over the most recent 12-month period. Provided that these thresholds were met, a company with operating cash flows of at least $25 million in aggregate for the last three fiscal years and positive amounts in each of the three fiscal years would have qualified for listing. Section 102.01C(III) required that an issuer demonstrate (a) market capitalization of at least $1 billion and (b) revenues of at least $100 million in the most recent fiscal year. Because both of these tests are valuation and revenue-based, the Exchange now seeks permanent approval to consolidate them into one test with two alternative subsections. One of the sections of the current Pilot Program, the "Valuation/Revenue Test," incorporates the pre-Pilot Program requirements of Section 102.01C(II) as the "Valuation/Revenue with Cash Flow Test" with no change to the previous thresholds. The other section incorporates the pre-Pilot Program requirements of Section 102.01C(III) as the "Pure Valuation/Revenue Test." In addition, the Exchange is proposing to permanently approve the amendments to the thresholds of Section 102.01C(III) that require that companies demonstrate (a) market capitalization of at least $750

[5] *See* Securities Exchange Act Release No. 49154 (January 29, 2004), 69 FR 5633 (February 5, 2004) (approving File No. SR–NYSE–2003–43).

[6] *See* letters from Kenneth A. Hoogstra, von Briesen & Roper, s.c., to Jonathan G. Katz, Secretary, Commission, dated February 25, 2004, and W. Randy Eaddy, Kilpatrick Stockton LLP, to Jonathan G. Katz, Secretary, Commission, dated March 11, 2004, (commenting on File No. SR–NYSE–2003–43).

[7] *See* Securities Exchange Act Release No. 49443 (March 18, 2004), 69 FR 13929 (March 24, 2004) (File No. SR–NYSE–2004–15).

[8] *See id.*

[9] *See id.*

[10] The "Earnings Test," the "Valuation/Revenue Test" (incorporating in one section the pre-Pilot Program Valuation/Revenue with Cash Flow Test and in another section the Pure Valuation/Revenue Test), or the "Affiliated Company Test." *See* Securities Exchange Act Release No. 49154 (January 29, 2004), 69 FR 5633 (February 5, 2004) (approving File No. SR–NYSE–2003–43).

million and (b) revenues of at least $75 million during the most recent fiscal year. As noted above, the Exchange represents that its staff has monitored the modest number of companies over the last two years that would have met the Pilot Program's "Pure Valuation/Revenue Test" and found that those companies performed to a standard that is appropriate for inclusion on the NYSE list.

The Exchange is also proposing permanent approval of corresponding restructuring changes to Section 103.01B, which sets out minimum numerical standards for non-U.S. issuers. The Exchange is also proposing permanent approval of changes to the numeric thresholds of Section 103.01B(III) in accordance with changes to Section 102.01C(III).

In addition, the Exchange seeks permanent approval of its suspended Pilot Program restructuring and amending the numerical continued listing standards. Section 802.01B of the Listed Company Manual currently applies to companies that fall below any of the following criteria: (i) Average global market capitalization over a consecutive 30-trading-day period is less than $50 million and total stockholders' equity is less than $50 million; or (ii) average global market capitalization over a consecutive 30-trading-day period is less than $15 million; or (iii) for companies that qualified for original listing under the "global market capitalization" standard, (a) average global market capitalization over a consecutive 30-trading-day period is less than $500 million and total revenues are less than $20 million over the last 12 months (unless the resultant entity qualifies as an original listing under one of the other original listing standards), or (b) average global market capitalization over a consecutive 30-trading-day period is less than $100 million.

The Exchange proposes to amend these thresholds and to specifically relate the continued listing standards of Section 802.01B to the original listing standards of Section 102.01C used to qualify a company for listing. Companies that list under the Pilot Program's "Earnings Test" or its predecessor test would be considered to be below compliance if: (a) Average global market capitalization over a consecutive 30-trading-day period is less than $75 million and, at the same time, total stockholders' equity is less than $75 million; or (b) average global market capitalization over a consecutive 30-trading-day period is less than $25 million. These levels have been increased in the proposal to reflect marketplace expectations of those companies deemed suitable for continued listing. These levels are lower than the existing "global market capitalization" standard.

Issuers that list under the Pilot Program's "Valuation/Revenue with Cash Flow Test" or its predecessor test would be considered to be below compliance standards if: (a) Average global market capitalization over a consecutive 30-trading-day period is less than $250 million and, at the same time, total revenues are less than $20 million over the last 12 months (unless the company qualifies as an original listing under one of the other original listing standards);[11] or (b) average global market capitalization over a consecutive 30-trading-day period is less than $75 million.

Issuers that list under the Pilot Program's "Pure Valuation/Revenue Test" or its predecessor test would be considered to be below compliance standards if: (a) Average global market capitalization over a consecutive 30-trading-day period is less than $375 million and, at the same time, total revenues are less than $15 million over the last 12 months (unless the company qualifies as an original listing under one of the other original listing standards); or (b) average global market capitalization over a consecutive 30-trading-day period is less than $100 million.

The Exchange also proposes to clarify that, in circumstances where a listed company's parent or affiliated company no longer controls the listed company or such listed company's parent or affiliated company falls below the continued listing standards applicable to the parent or affiliated company, the continued listing standards applicable to the Pilot Program's "Earnings Test" would apply to companies that originally listed under the Affiliated Company Standard. In addition, the Exchange proposes to increase the continued listing criteria for funds, REITs, and limited partnerships from $15 million to $25 million with a corresponding increase to the notification threshold from $25 million to $35 million.

Companies that fall below the foregoing minimum standards could be permitted a period of time to return to compliance, in accordance with the procedures specified in Sections 802.02 and 802.03 of the Listed Company Manual. As a general matter, companies must reestablish the level of market capitalization (and, if applicable, shareholder's equity) specified in the continued listing standard below which the company fell. However, with respect to the current requirements of Section 802.01B(I) that a company reestablish both its market capitalization and its stockholders' equity to the $50 million level, footnote (C) to Section 802.01B provides several alternatives. Currently, the footnote specifies that, to return to conformity, a company must do one of the following: (a) Reestablish both its market capitalization and its stockholders' equity to the $50 million level; (b) achieve average global market capitalization over a consecutive 30-trading-day period of at least $100 million; or (c) achieve average global market capitalization over a consecutive 30-trading-day period of $60 million, with either (x) stockholders' equity of at least $40 million, or (y) an increase in stockholders' equity of at least $40 million, since the company was notified by the Exchange that it was below continued listing standards. The Exchange proposes to increase these thresholds to require a company to: (a) Reestablish both its market capitalization and its stockholders' equity to the $75 million level; or (b) achieve average global market capitalization over a consecutive 30-trading-day period of at least $150 million; or (c) achieve average global market capitalization over a consecutive 30-trading-day period of $90 million with either (x) stockholders' equity of at least $60 million, or (y) an increase in stockholders' equity of at least $60 million, since the company was notified by the Exchange that it was below continued listing standards.

The Exchange represents that it has considered how to transition the above-described changes to the continued listing standards and intends to provide a period of 30 trading days from the date of any Commission approval of the proposed amendments until such amendments would become effective.

Sections 802.02 and 802.03 of the Listed Company Manual provide that, with respect to a company which is determined to be below continued listing standards a second time within 12 months of successful recovery from previous non-compliance, the Exchange will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of financial recovery from the first incident. The Exchange may then take appropriate action, which, depending upon the circumstances, may include truncating the normal procedures for reestablishing conformity with the continued listing standards or

[11] These levels are lower than the existing "global market capitalization" standard.

immediately initiating suspension and delisting procedures. For those companies that are within such a 12-month period and who would be deemed to be below continued listing standards as a direct result of the approval of the amendments proposed in this filing, the Exchange would not intend to truncate or immediately initiate suspension and delisting solely on the basis of the proposed increase to the current continued listing standards. The Exchange would take into consideration all of the facts and circumstances relating to the company in determining whether to allow such company an opportunity to submit a second plan.

With respect to an issuer currently below the continued listing standards now in force, the Exchange intends to allow it to complete its applicable follow-up procedures and plan for return to compliance as provided in Sections 802.02 and 802.03 of the Listed Company Manual. If, at the end thereof, the issuer is compliant with the continued listing standards about which it was originally notified, but below the increased requirements set forth above, the Exchange would grant it an opportunity to present an additional business plan advising the Exchange of definitive action the issuer has taken, or is taking, that would bring it into conformity with the increased requirements within a further 12 months. In addition, if an issuer were to complete its currently applicable follow-up procedures and plan and were not compliant at that time with the continued listing standards about which it was originally notified, but is above the increased requirements set forth above, the Exchange would consider that issuer to be in conformity with the continued listing standards.

For an issuer that is in compliance with the continued listing standards now in force, but that might be below the continued listing standards proposed herein, the proposed 30-day measurement period prior to effectiveness would allow the Exchange sufficient time to provide early warnings to any issuer that would potentially be below compliance at the end of that period. If, at the end of the 30-trading-day measurement period, an issuer is below the increased requirements set forth above, the Exchange would formally notify the issuer of such non-compliance and provide it with an opportunity to present a business plan within 45 days of that notification advising the Exchange of definitive action the issuer would take to bring it into conformity with the increased requirements within an 18-month period.

Finally, the Exchange is proposing minor technical and conforming changes to Sections 102.02C, 103.01B, 802.01B, and 802.01C of the Listed Company Manual.

2. Statutory Basis

The Exchange believes that the proposed rule change satisfies the requirement under Section 6(b)(5) of the Act [12] that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NYSE did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–NYSE–2004–20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–20 and should be submitted on or before July 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15049 Filed 7–1–04; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49925; File No. SR–OCC–2004–08]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Clearance and Settlement of Variance Futures and Options on Variance Futures

June 28, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 11, 2004, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

OCC is seeking approval to clear and settle variance futures and to clear and settle options on variance futures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Introduction

The purpose of this proposed rule change is to enable OCC to clear and settle futures contracts on the variance over a set time period of a reference variable selected by the futures market proposing to trade the contracts "variance futures" and to clear and settle options on variance futures. A variance is a statistical measure of the variability of price returns relative to an average (mean) price return.

CBOE Futures Exchange, LLC ("CFE") has proposed to trade variance futures for which the reference variable would be the S&P 500 Index. The underlying variance will be calculated by CFE (or its agent) using a standard formula that uses continuously compounded daily returns on the reference variable for a specified time period. The calculated variance will then be annualized assuming 252 business days per year. CFE currently proposes futures on the one month variance and three month variance of the S&P 500 Index although CFE may list variance futures on other variance measurement periods for the S&P 500 Index or on other reference variables in the future. The variance measurement period for each series of variance futures traded on CFE will begin on the first business day following the maturity date of the previously maturing series and continue to (and include) the maturity date of the subject series. CFE may open trading in a series of variance futures prior to the beginning of the measurement period for the underlying variance. For example, CFE may open a future contract on the one month variance of the S&P 500 Index four months before its maturity date where the measurement period for the variance underlying that variance future would be the one month prior to the maturity date of the future.

Futures on variance differ from futures on volatility indexes currently traded on CFE and cleared and settled by OCC in that underlying variance is calculated using only historical daily closing values of the reference variable while an underlying volatility index represents the implied volatility component of bid and ask premium quotations for options on a reference variable.

OCC believes that an underlying variance is a "commodity" within the definition of Section 1a(4) of the Commodity Exchange Act ("CEA"), which defines "commodity" to include "all * * * rights, and interests in which contracts for future delivery are presently or in the future dealt in." OCC believes a variance as proposed to be traded by CFE is clearly neither a "security" as defined in Section 3(a)(10) of the Securities Exchange Act of 1934 (the "Act") nor a "narrow-based security index" as defined in Section 3(a)(55)(B) of the Act. Accordingly, OCC believes a futures contract on such a variance would not be a "security future" within the meaning of Section 3(a)(55)(A) of the Act and therefore would be within the exclusive jurisdiction of the Commodity Futures Trading Commission. OCC therefore proposes to clear this product in its capacity as a "derivatives clearing organization" registered under Section 5b of the CEA.

2. Rule Changes

In order to provide for the clearance of variance futures, OCC proposes to add four new defined terms to Article I of its By-Laws. The more general term "multiplier" would be added to encompass the already defined term "index multiplier" as well as the multiplier that would be applied to a variance future to determine the final settlement price. Adding the multiplier definition would simplify other amendments to the By-Laws and Rules as described below. The term "reference variable" will be defined to mean the price or value of a security, commodity, future, currency, asset, index, or other thing, the variance or other measure of variability of which is used as the underlying interest for a cleared contract. The term would be needed to describe contracts, such as variance futures, that have as their underlying a measure of the variability of the price or level of an index or instrument. "Underlying variance" or "variance" would be defined as the variability of the reference variable over a specified time period as measured by the futures market on which the variance future is traded or that market's designated reporting authority. A "variance future" would be defined as a future on a variance.

Article VI, Section 10(d) of the By-Laws currently provides that the index multiplier for an index future is set by a market at the time a series is opened and may be adjusted under Article XII, Sections 3 and 4. The rule change would make Section 10(d) applicable to variance futures by replacing the term "index multiplier" with the new term "multiplier" and by specifically referring to variance futures as well as index futures. Likewise, Article XII, Sections 3 and 4 (relating to adjustments) and Section 5, "Unavailability or Inaccuracy of Final Settlement Price," are made applicable to variance futures and options on such futures. In order to determine the variance of a variance future that has a stock index as its reference variable, the level of the stock index must be accurate and available. Therefore, OCC would require similar authority to adjust variance futures for changes in the index that is the reference variable or the unavailability of such index, as OCC has in the case of indexes underlying index futures. Additionally, a new

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

Section 4(d) would be added to Article XII to account for the fact that variance futures may also need to be adjusted for changes in the calculation of the underlying variance itself.

Variance futures are non-equity futures and as such would be margined under Chapter VI, Rule 602.[3] Rule 602(a)–(e) describes OCC's current automated margining system, TIMS. However, TIMS is not currently configured to calculate appropriate margin levels for variance futures. Thus, the appropriate risk margin levels for variance futures cannot be determined through the application of Rule 602(a)–(e). It will be necessary to add variance futures to those instruments that are exempted from the provisions of 602(a)–(e) by Rule 602(f). New Rule 602(f)(6) would direct that risk margin for variance futures be calculated using such measures of risk as OCC deems appropriate. Because the margin requirements for variance futures will not be set through TIMS, those margin requirements will not appear on the Daily Margin Report provided for in Rule 605, which is a report of the TIMS calculations applied to a Clearing Member's positions. OCC will add an interpretation and policy to Rule 605 advising Clearing Members that risk margin with respect to variance futures will not be included in the Daily Margin Report, and that notifications to Clearing Members of their risk margin requirement in respect of variance futures will be given before 9 a.m. Central Time, which is the same deadline that applies to delivery of the Daily Margin Report. Clearing Members will be required to make settlement of variance futures risk margin as if it were included in the Daily Margin Report.

The "Introduction" to Chapter XIII will be amended to include variance futures among those futures contracts that OCC is approved to clear and settle. Rule 1301(a) will be, like Article VI, Section 10(d), made applicable to variance futures by simply replacing "index multiplier" with "multiplier" and by adding references to variance futures where index futures are referenced.

3. Amendment to Clearing Agreement

OCC and CFC will be entering into First Amendment to Agreement for Clearing and Settling Security Futures and Futures and Futures Options on Broad-Based Indexes. The Amendment will make several changes to the Clearing Agreement in anticipation of the clearance of variance futures. Only certain of those changes will be substantive. Section 3(b) of the Clearing Agreement currently identifies the permissible underlying interests for futures contracts that CFE may clear though OCC. Section 5 of the Amendment will amend Section 3(b) to permit the parties to agree on additional underlying interests by completion and execution of a schedule in the form that will be attached to the Amendment as Schedule C. The parties have also agreed upon and will include with the Amendment a Schedule C–1 for variance futures. Section 10 of the Amendment will amend Section 3(e) to extend the established procedure for selecting underlying interests to an underlying interest listed on a Schedule C.

Section 3(c)(i) of the Clearing Agreement currently states that broad-based index futures are the only acceptable underlying interest for options to be cleared under the Clearing Agreement. Section 6 of the Amendment would change this language so that any future other than a security future may be an underlying interest for such an option.

The Clearing Agreement currently requires CFE to indemnify OCC in certain circumstances. Section 11 of the Amendment would add a provision clarifying, among other things, the applicability of the indemnification provisions to certain currently pending litigation against CBOE and CFE and to similar litigation or claims that may be brought in the future. Section 11 of the Amendment would also make CBOE a party to the Clearing Agreement for the purpose of assuming joint and several liability with OCC in the event that OCC is entitled to indemnification with respect to such litigation or claims.

* * * * *

The proposed changes to OCC's By-Laws and Rules and the Amendment to the Clearing Agreement are consistent with the purposes and requirements of Section 17A of the Act[4] because they are designed to promote the prompt and accurate clearance and settlement, to foster cooperation and coordination with persons engaged in clearance and settlement, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement, and, in general, to protect investors and the public interest.

Variance futures are commodity futures within the exclusive jurisdiction of the CFTC, and OCC will therefore clear variance futures in its capacity as a registered derivatives clearing organization under the CFTC's regulatory jurisdiction. Accordingly, although this rule change represents a change in OCC's existing service of clearing commodity futures contracts, that service is not otherwise within the jurisdiction of the Commission. This rule change will not affect the safeguarding of funds or securities in OCC's possession because OCC will apply procedures and safeguards to the clearing of these contracts that are similar to those it applies to the clearing of securities options and security futures over which the Commission has direct regulatory authority. The respective rights and obligations of OCC and its clearing members with respect to matters within the Commission's jurisdiction will be unaffected.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(4)[6] thereunder because the proposed rule effects a change in an existing service of OCC that does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which OCC is responsible and does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[3] "Non-equity future" is defined in OCC By-Laws Article I as a future other than a stock future.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(4).

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's on-line comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail message to *rule-comments@sec.gov*. Please include File No. SR–OCC–2004–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–OCC–2004–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's web site at *http://www.optionsclearing.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–OCC–2004–08 and should be submitted on or before July 23, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15086 Filed 7–1–04; 8:45 am]

BILLING CODE 8010–01–U

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49929; File No. SR–OCC–2004–04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change To Reduce the Thresholds Applied to Equity Options for Purposes of Exercise by Exception Processing on Expiration

June 28, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], notice is hereby given that on March 19, 2004, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

OCC is seeking to amend its rules to reduce the threshold amounts applied to equity options for purposes of exercise by exception processing on expiration.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend OCC's Rule 805, "Expiration Date Exercise Procedure," which describes its expiration date exercise procedures including exercise by exception processing. Specifically, OCC proposes to reduce the threshold amounts used to determine equity options that are in the money for purposes of exercise by exception processing.

Background

OCC has for years maintained an "exercise by exception" procedure. Under that procedure, options that are in the money at expiration by more than a specified threshold amount are exercised automatically unless the clearing member carrying the position instructs otherwise. Equity options are determined to be in the money or not based on the difference between the exercise price and the closing price of the underlying equity interest on the last trading day before expiration. The current threshold for equity options is $.75 in a clearing member's customers' account and $.25 in any other account (*i.e.*, firm and market makers' accounts).

Discussion

OCC's Roundtable has proposed that the threshold amounts for equity options be reduced to $.25 for customers' accounts and $.15 in all other accounts.[3] The Roundtable believes that reducing these thresholds will streamline expiration processing.

In response to the Roundtable's proposal, OCC analyzed equity options exercise information from the November 2003, December 2003, and January 2004 expirations. OCC's analysis determined that clearing members exercised 93% to 97% of equity option contracts carried in their customers' accounts that were in the money by $.25 to $.74 (*i.e.*, the change in the "in the money" amount represented by the proposed customer account threshold). OCC's analysis also determined that exercise activity in the proposed "other account" range (*i.e.*, with an in the money amount of $.15 to $.24) supported the proposed threshold change.

OCC also surveyed all clearing members to obtain their views and comments on the proposed change. Survey results demonstrated strong support across the membership for the change. Of 116 clearing members, 105 responded to the survey with 96 clearing members in favor of the threshold change.[4] Clearing members supporting the change confirmed the Roundtable's view that it would significantly reduce the number of instructions they are required to input

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] OCC's Roundtable is an OCC-sponsored advisory group comprised of representatives from OCC's participant exchanges, OCC, a cross-section of OCC clearing members, and industry service bureaus. The Roundtable considers operational improvements that may be made to increase efficiencies and lower costs in the options industry.

[4] OCC also contacted clearing members that did not respond to its survey. These firms expressed no opinion on the matter.

on expiration, thereby shortening the timeframe for completing instructions to OCC.

OCC contacted each firm that opposed the threshold change. These firms expressed a concern about having to input more "do not exercise" instructions. All of these firms agreed that they could adapt to the change if supported by the majority of clearing members. OCC reviewed the positions carried by these firms and determined that, on average, they carry position in fewer than ten expiring series that are below the current threshold of $.75. This review led OCC to conclude that the threshold change would result in only a slight increase in processing time for these firms and that they would not be unduly burdened by its implementation.

The clearing member survey also asked firms to provide an estimate of the time needed to accommodate the threshold change based upon supplied timeframes.[5] The majority of firms indicated that they could complete the necessary systems development and customer notifications within six months. OCC contacted any firm that commented on the proposed timeframes, and all expressed the view that their efforts would be completed in the six-month time period.

The Roundtable has requested of OCC that this change be implemented for the September 2004 expiration. OCC therefore requests that the Commission approve this rule filing by September 1, 2004, and authorize OCC to implement the threshold change thereafter based upon its assessment of clearing member readiness. If OCC determines that clearing members need additional time to complete preparations for the threshold change, OCC will implement the threshold change in accordance with such time needed. OCC anticipates implementation no later than for the October 2004 expiration. OCC will provide at least ten days' advanced notice to clearing members of the effective date for the new threshold amounts. Such notice will be provided through information memoranda and other forms of electronic notice such as e-mail.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder applicable to OCC because it will promote the prompt and accurate clearance and settlement of securities transactions by increasing OCC's efficiency in processing exercise information of options on expiration.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

As referenced in Item II(A), written comments were received in connection with the clearing member survey conducted by OCC. No other written comments were received, and no other written comments are intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2004–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OCC–2004–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2004–04 and should be submitted on or before July 23, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15087 Filed 7–1–04; 8:45 am]

BILLING CODE 8010–01–P

[5] The supplied timeframes were zero to three months and four to six months from the time of the survey.

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4755]

Culturally Significant Objects Imported for Exhibition Determinations: "The Pursuit of Pleasure"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of

October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition, "The Pursuit of Pleasure," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Guggenheim-Hermitage Museum, Las Vegas, Nevada, from on or about July 15, 2004, to on or about January 16, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information or a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: June 28, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–15096 Filed 7–1–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Weekly Receipts

Aviation Proceedings, Agreements filed the week ending June 11, 2004, but excluded in the report published at 69 FR 35122. The following Agreement was filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2004–18116.

Date: Filed June 10, 2004.

Parties: Members of the International Air Transport Association.

Subject: 25th IATA CSC held in Singapore on 11 March, 2004, CSC/26Meet/005/2004 dated 10 June, 2004, Finally Adopted Resolutions 600b & 600b(II), Intended effective date: 15 July, 2004.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–15032 Filed 7–1–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–01–9181].

Application of Homer Air, Inc. for Issuance of a Certificate of Public Convenience and Necessity

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2004–6–22).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Homer Air, Inc., is fit, willing, and able, to engage in interstate scheduled air transportation of persons, property and mail under 49 U.S.C 41102.

DATES: Persons wishing to file objections should do so no later than July 9, 2004.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–01–9181 and addressed to Department of Transportation Dockets (M–30, Room PL–401), 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Patricia L. Thomas, Chief, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: June 25, 2004.

Karan K. Bhatia,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 04–15046 Filed 7–1–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 23.1523, Minimum Flightcrew

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular, AC 23.1523. This guidance sets forth one method that may be used to show compliance with the requirements contained in 14 CFR, part 23 and § 23.1523, which prescribes certification requirements for minimum flight crew. Most part 23 airplanes are certified for single pilot operations, therefore, the major focus of this guidance is to address cockpit workload considerations that are described in this rule. We are proposing that this guidance be used to improve cockpit safety by addressing pilot workload which has been impacted through the development on newer and novel technologies available in general aviation cockpits along with increased complexity of operations. This AC is one method that can be utilized to determine workload factors and issues for normal, utility, aerobatic and commuter category airplanes. Material in this AC is neither mandatory nor regulatory in nature and does not constitute a regulation. This material is intended to be a ready reference for part 23 airplane manufacturers, modifiers, Federal Aviation Administration (FAA) design evaluation engineers, flight test engineers, engineering flight test pilots [Aircraft Certification Office (ACO), Flight Standards, and Manufacturers] as well as human factors engineering evaluators. This material may also be used by FAA authorized designees in the performance of workload evaluations.

DATES: Comments must be received on or before August 31, 2004.

ADDRESSES: Copies of the proposed Minimum Flight Crew, AC 23.1523, may be requested from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. Proposed advisory circulars are posted on the RGL at *http://www.airweb.faa.gov/AC.*

FOR FURTHER INFORMATION CONTACT: Mr. Frank Bick, Standards Office, Small Airplane Directorate, Aircraft Certification Service, Kansas City, Missouri 64106, telephone (816) 329–4119, fax (816) 329–4090, *frank.bick@faa.gov.*

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** A copy of the AC will also be available on the Internet at *http://www.airweb.faa.gov/AC* within a few days.

Comments Invited: We invite interested parties to submit comments on the proposed AC. Commenters must identify AC 23.1523 and submit comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments before

issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE–110), 901 Locust, Room 301, Kansas City, Missouri, between the hours of 8:30 and 4 p.m. weekdays, except Federal holidays by making an appointment in advance with the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background: In the early 1980s, a move to reduce the crew size of the new generation of commercial jet transport airplanes from three to two caused the FAA to develop additional criteria and guidance for minimum crew determination for part 25 airplanes. AC 25.1523 was developed to provide manufacturers and certification personnel a means of demonstrating compliance to 14 CFR, part 25, § 25.1523. Most part 23 airplanes are single pilot, none require a crew of three, and only a few require a crew of two; therefore, there was no desire to address crew complement in these airplanes and no parallel effort was initiated at that time for part 23 airplanes. For many years, part 23 airplane cockpits were relatively simple in design and utilized instruments and systems that were also quite similar in operation. This made it relatively easy for pilots to safely transition from one part 23 airplane to another. However, in recent years due to the growth of modern technology and the reduced cost of electronic components, novel and more complex integrated avionic systems are increasingly being installed in part 23 airplanes. These new systems have changed the appearance, operation, and usability of the pilot-vehicle interface. There is also much variation between manufacturers in terms of the design and operational characteristics of these systems. Consequently, there is a concern that pilot(s) familiar and proficient with one system may not be able to sufficiently understand and operate another system. Although many of these systems can greatly improve pilot situational awareness and safety, poorly designed systems can increase pilot workload, and increase the potential for pilot error.

Additionally, the lack of standardization in the design and operation of these systems can negatively affect pilot training and impact performance and safety. Accordingly, there is a need to more closely examine pilot workload and error potential in these highly complex, integrated cockpits.

Issued in Kansas City, Missouri on June 16, 2004.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Office.

[FR Doc. 04–15038 Filed 7–1–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Noise Exposure Maps for Santa Barbara Airport, Santa Barbara, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by City of Santa Barbara, California for Santa Barbara Airpor under the provisions of 49 U.S.C. 47501 *et. seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: *Effective:* The effective date of the FAA's determination on the noise exposure maps is June 28, 2004.

FOR FURTHER INFORMATION CONTACT: Jennifer Mendelsohn, Environmental Protection Specialist, AWP–621.6, Southern California Standards Section, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, Los Angeles, California 90009–2007, Telephone: 310/725–3637.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Santa Barbara Airport are in compliance with applicable requirements of Part 150, effective June 28, 2004. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by City of Santa Barbara, California. The documentation that constitutes the "Noise Exposure Maps" as defined in section 150.7 of Part 150 includes: Exhibit 3M "2003 Noise Exposure Map," and Exhibit 3P "2008 Noise Exposure Map." The Noise Exposure Maps contain current and forecast information including the depiction of the airport and its boundaries, the runway configurations, land uses such as residential, open space, commercial/office, community facilities, libraries, churches, open space, infrastructure, vacant and warehouse and those areas within the Community Noise Equivalent Level (CNEL) 60, 65, 70 and 75 noise contours. Estimates for the number of people within these contours for the year 2003 are shown in Table 4D. Estimates of the future residential population within the 2008 noise contours are shown in Table 4G. Exhibit 3A displays the location of noise monitoring sites. Flight tracks for the existing and the five-year forecast Noise Exposure Maps are found in Exhibits 3E, 3F, 3G, 3H, 3J, and 3K. The type and frequency of aircraft operations (including nighttime operations) are found in Tables 3D and 3E. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on June 28, 2004.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps

to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Community and Environmental Needs Division, APP–600, 800 Independence Avenue, SW., Washington, DC 20591. Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261. Karen Ramsdell, Airport Director, Santa Barbara Airport, 601 Firestone Road, Goleta, California 93117.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California, on June 28, 2004.

Mark A. McClardy,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 04–15044 Filed 7–1–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Revision to the Date and Location of the Scoping Meetings for the Notice of Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report for Ontario International Airport, Ontario, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Revision to Notice to hold one (1) public scoping meeting and one (1) governmental and public agency scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this revised notice to advise the public of a change in the date and location of governmental and public scoping meetings. A joint Environmental Impact Statement/Environmental Impact Report will be prepared for development recommended by the Master Plan for Ontario International Airport, Ontario, California. To ensure that all significant issues related to the proposed action are identified, one (1) public scoping meeting and one (1) governmental and public agency scoping meeting will be held.

FOR FURTHER INFORMATION CONTACT: Jennifer Mendelsohn, Environmental Protection Specialist, AWP–621.6, Southern California Standards Section, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, Los Angeles, California 90009–2007, Telephone: 310/725–3637. Comments on the scope of the EIS/EIR should be submitted to the address above and must be received no later than 5 p.m. Pacific Daylight Time, on Monday, September 13, 2004.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) published this Notice of Intent on June 9, 2004. This revised notice is to advise the public of a change in the date and location of the governmental and public scoping meetings. The FAA in cooperation with the city of Los Angeles, California, will prepare a joint Environmental Impact Statement/ Environmental Impact Report for future development recommended by the Master Plan for Ontario International Airport (ONT). The need to prepare an Environmental Impact Statement (EIS) is based on the procedures described in FAA Order 5050.4A, Airport Environmental Handbook.

ONT is a commercial service airport located within a standard metropolitan statistical area and the proposed airside development includes relocation of the runways, separation of the runways, extension of a runway and construction and/or relocation of taxiway(s). The proposed landside improvements include additional terminals, additional gates, construction and/or expansion of parking lots, construction and/or expansion of access roads, construction, expansion and/or relocation of the existing surface transportation center, construction, expansion and/or relocation of the general aviation facilities, construction, expansion and/or relocation of airport maintenance area, construction, expansion and/or relocation of an airport administration facility, construction, expansion and/or relocation of aircraft safety facility (aircraft rescue and firefighting (ARFF) facility). The proposed project also may include an airport people mover (APM). The area around the airport contains non-compatible land uses in terms of aircraft noise; and the proposed development is likely to be controversial.

Significant growth in the demand for air travel through 2030 is expected in the ONT service area. The Southern California Association of Governments (SCAG) 2004 Regional Transportation Plan (RTP) predicts a doubling of regional passenger demand by 2030 and predicts that air cargo demand will more than triple. The RTP proposes to accommodate this growth at outlying airports rather than expansion of Los Angeles International Airport (LAX). The proposed LAX Master Plan supports this concept and plans to modernize facilities but to maintain the airport capacity at about 78 Million Annual Passengers (MAP). Other airports in the region also are constrained from growth, generally by either the limitations of their facilities or by court settlements that restrict growth to control environmental impacts to surrounding residents. The RTP relies on the Ontario International Airport to accommodate a larger share of the total regional passenger and air cargo demand in the future than it currently accommodates (6 to 6.5 million passengers used ONT in 2003) to serve this growing regional demand. The ONT Master Plan development alternatives, therefore, propose airport improvements that can accommodate passenger growth to 30 Million Annual Passengers or the estimated capacity of the two existing dependent runways.

The city of Los Angeles, pursuant to the California Environmental Quality Act of 1970 (CEQA) also will prepare an Environmental Impact Report (EIR) for the proposed development. In an effort to eliminate unnecessary duplication and reduce delay, the document to be prepared, will be a joint EIS/EIR in accordance with the President's Council on Environmental Quality Regulations described in 40 Code of Federal Regulations sections 1500.5 and 1506.2.

The Joint Lead Agencies for the preparation of the EIS/EIR will be the Federal Aviation Administration and the city of Los Angeles, California.

The following master planning development alternatives and the No Action/No Project Alternative are proposed to be evaluated in the EIS/EIR as described below:

No Action/No Project Alternative—The No Action/No Project Alternative represents the conditions that would occur at ONT without comprehensive Master Plan improvements. This alternative will not include any new facilities or improvements to existing facilities other than those that have independent utility, are unconnected actions to comprehensive Master Plan improvements and have (or are) undergoing separate environmental review. When forecasted operations are realized, current facilities would not provide an acceptable level of service to accommodate this increased passenger demand.

Alternative 1—Linear expansion of existing passenger terminals and aircraft apron (gates) on the north side of the airport, relocation of both runways to the south and east to create additional terminal area circulation, separation of the runways and construction of a center taxiway between north and south runways to improve airfield efficiency and safety, construction of structured auto parking lots, construction/expansion of terminal access roads, relocation and/or expansion of the existing ground transportation center, construction of additional economy parking lots, relocation and/or expansion of employee parking lot, expansion and/or relocation of general aviation facilities, expansion and/or relocation of airport maintenance area, construction and/or relocation of an airport administration facility, expansion/construction/relocation of aircraft safety facility (aircraft rescue and firefighting (ARFF) facility), impact to some existing south side facilities, an airport people mover (APM) system may be constructed, surface transportation improvements may be constructed, land acquisition of approximately 33 acres, construction of new parallel taxiways, relocation of existing parallel taxiways and construction/relocation of connector taxiways.

Alternative 2—Linear expansion of the existing passenger terminals on the north side of the airport, construction of a passenger terminal on the south side of the airport, no relocation of runways, extension of south runway to the east, relocation of Taxiway S, construction of structured auto parking lots, construction/expansion of terminal access roads including new ground access facilities for the new south terminal, relocation and/or expansion of the existing ground transportation center, construction of additional economy parking lots, relocation and/or expansion of employee parking lot, expansion and/or relocation of general aviation facilities, expansion and/or relocation of airport maintenance area, construction and/or relocation of an airport administration facility, expansion/construction/relocation of aircraft safety facility (aircraft rescue and firefighting (ARFF) facility), an airport people mover (APM) system may be constructed, surface transportation improvements may be constructed, impact to many of the existing south side facilities and land acquisitions of approximately 220 acres.

Comments and suggestions are invited from Federal, State and local agencies, and other interested parties to ensure that the full range of issues related to these proposed projects are addressed and all significant issues are identified. Written comments and suggestions concerning the scope of the EIS/EIR may be mailed to the FAA informational contact listed above and must be received no later than 5 p.m. Pacific Daylight Time, on Monday, September 13, 2004.

Public Scoping Meetings

The FAA and LAWA will jointly hold one (1) public and one (1) governmental agency scoping meeting to solicit input from the public and various Federal, State and local agencies that have jurisdiction by law or have specific expertise with respect to any environmental impacts associated with the proposed projects. A scoping meeting specifically for governmental and public agencies will now be held on Tuesday, August 17, 2004, from 1 p.m. to 3 p.m., Pacific Daylight Time at the Ontario Convention Center, 2000 Convention Center Way, Ontario, California 91764 (enter public parking lot off Holt Avenue). The public scoping meeting will be held at the same location on Tuesday, August 17, 2004, from 6 p.m. to 9 p.m. Pacific Daylight Time.

Issued in Hawthorne, California on Friday June 25, 2004.

Mark A. McClardy,

Manager, Airports Division, Western—Pacific Region, AWP–600.

[FR Doc. 04–15043 Filed 7–1–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–50]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–5174.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, D.C., on June 24, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Dispositions of Petitions

Docket No.: FAA–2003–15527.

Petitioner: Airbus.

Section of 14 CFR Affected: 14 CFR 25.812(b)(1)(i), 25.853, 25.855, 25.857, 25.858 and 25.1439(a).

Description of Relief Sought/Disposition: Airbus seeks an extension of Exemption No. 8084 for 3 months. Exemption No. 8084 allows Airbus to install and operate lower deck mobile crew rests (LD–MCR) on Airbus Model A330 airplanes for 12 months from the date the exemption was issued.

Grant of Exemption, 06/23/2004, Exemption No. 8084A

Docket No.: FAA–2004–17212.

Petitioner: Israel Aircraft Industries, Ltd.

Section of 14 CFR Affected: 14 CFR 25.813(b)(3), 25.857(e) and 25.1447(c)(1).

Description of Relief Sought/Disposition: To allow carriage of two non-crewmembers (commonly referred to as supernumeraries) on Boeing Model 737 airplanes converted from passenger to freighter configuration.

Grant of Exemption, 06/03/2004, Exemption No. 8335

BILLING CODE 4910–13–P

Exemption No. 8084A

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
RENTON, WASHINGTON 98055-4056

In the matter of the petition of **Airbus** for an exemption from §§ 25.812(b)(1)(i), 25.853, 25.855, 25.857, 25.858 and 25.1439(a) of Title 14, Code of Federal Regulations	**Regulatory Docket No. FAA-2003-15527**

GRANT OF EXEMPTION

By letter dated April 9, 2004, Mr. Ganz Hermann, Vice President, Airbus Product Integrity – Airworthiness Standards, Airbus, 1 Rond-Point Maurice Bellonte, 31707 Blagnac Cedex, France, petitioned for an amendment to Exemption No. 8084, issued on July 2, 2003. That exemption granted Airbus certain relief from the requirements of §§ 25.812(b)(1)(i), 25.853, 25.855, 25.857, 25.858 and 25.1439(a) of Title 14, Code of Federal Regulations to allow the installation and operation of lower deck mobile crew rests (LD-MCR) on Airbus Model A330 airplanes for 12 months from the date of issuance. The petitioner now requests a three-month extension of Exemption No. 8084.

The petitioner requests relief from the following regulations:

Section 25.812(b)(1)(i) at Amendment 25-58 - Emergency lighting.

Section 25.853 at Amendment 25-66 – Compartment interiors.

Section 25.855 at Amendment 25-60 – Cargo or baggage compartments.

Section 25.857 at Amendment 25-60 – Cargo compartment classification.

Section 25.858 at Amendment 25-54 – Cargo or baggage compartment smoke or fire detection systems.

Section 25.1439(a) at Amendment 25-38 – Protective breathing equipment.

ANM-04-409-E

A summary of the petition submitted by Airbus is as follows:

Airbus petitions for a three (3) month extension of Exemption No. 8084 from 14 CFR 25.812(b)(1)(i) at Amendment 25-58; 14 CFR 25.853 at Amendment 25-66; 14 CFR25.855 at Amendment 25-60; 14 CFR 25.857 at Amendment 25-60; 14 CFR 25.858 at Amendment 25-54; and 14 CFR 25.1439(a) at Amendment 25-38 in order to permit FAA to issue and Airbus to document compliance with special conditions to be issued by FAA, governing the lower deck crew rest facility. [1]

FAA's determination as to need for public comment period

The FAA has determined that good cause exists for waiving the requirement for a public comment period on the petition to amend Exemption No. 8084 for the following reasons:

- Delaying action on this petition would adversely affect the petitioner, and
- This petition requests an exemption identical to that granted by Exemption No. 8084, except for a 3 month extension of the expiration date.

The FAA's analysis/summary is as follows:

In addition to the actions presented in its petition dated April 9, 2004, Airbus has incorporated certain design changes to ensure that all LD-MCRs on A330 airplanes—beginning with manufacturer's serial number (MSN) 591—which are delivered to Northwest Airlines (NWA) on or after April 28, 2004, will conform to the proposed special conditions contained in the FAA's internal issue paper entitled "A330/A340 Lower Deck Mobile Crew Rest Special Conditions for Cabin Safety Certification." Furthermore, the LD-MCRs on foreign registered A330 airplanes have been previously certified to special conditions developed by the Joint Aviation Authorities (JAA) and documented in A330/340 Certification Review Item, "Underfloor Crew Rest Compartment," dated May 2, 1993. These facts support granting an extension to Exemption No. 8084 to Airbus.

As indicated above, the FAA has developed proposed special conditions for LD-MCRs on A330 airplanes, but they have not yet been published for public comment. As a result, final special conditions will not be available before the scheduled delivery of new airplanes with LD-MCRs to NWA. In addition, they will not be available in time to incorporate any changes—which may be necessary to meet the final special conditions—to the six airplanes with LD-MCRs which were delivered to NWA prior to April 28, 2004.

The FAA considers that it is in the public interest to extend the time limitation of Exemption No. 8084 for the following reasons:

- It would provide time for the FAA to publish the proposed special conditions pertaining to LD-MCR's on A330 airplanes for public comment, to consider any comments received, and to issue final special conditions;

[1] To see a complete copy of the petition submitted by Airbus on April 9, 2004, see the Docket Management System on the Internet at dms.dot.gov Click on Simple Search, enter Docket No. 15527, and click on Search.

- It would prevent significant delay in the delivery of new NWA airplanes with LD-MCRs; and
- It would allow sufficient time for design changes necessitated by the final special conditions, if any, to be incorporated on LD-MCRs on the six airplanes which were delivered previously to NWA.

Airbus has petitioned for an extension of three months to the expiration date of Exemption No. 8084. However, the FAA considers that the exemption should be extended for six months to allow adequate time for the agency to address any public comments which it may receive on the proposed special conditions and to publish final special conditions and for Airbus to incorporate any design changes necessitated by the final special conditions.

In consideration of the foregoing, I find that an amendment to Exemption No. 8084 is in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701, delegated to me by the Administrator, Airbus is hereby granted an amendment to Exemption No. 8084 to extend its expiration date to January 3, 2005. This exemption is applicable to Airbus Model A330 airplanes and is subject to the following limitations:

1. Airbus must receive confirmation from the JAA that the LD-MCRs meet the JAA's special conditions documented in A330/340 Certification Review Item, "Underfloor Crew Rest Compartment," dated May 2, 1993.

2. Airbus must demonstrate compliance to the FAA's final special conditions pertaining to installation and operation of LD-MCRs prior to expiration of this exemption. Such compliance may necessitate certain design changes associated with installation and operation of the LD-MCRs. If any design changes are necessary and they are not accomplished and approved by the FAA before the expiration of this amendment to Exemption No. 8084, placards must be placed on the LD-MCRs, specifying that they may not be occupied during any phase of flight.

Issued in Renton Washington, on June 23, 2004.

Kalene C. Yanamura
Acting Manager
Transport Airplane Directorate
Aircraft Certification Service

Exemption No. 8335

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
RENTON, WASHINGTON 98055-4056

In the matter of the petition of

Israel Aircraft Industries, Ltd.

for an exemption from §§ 25.813(b)(3), 25.857(e) and 25.1447(c)(1) of Title 14, Code of Federal Regulations

Regulatory Docket No. FAA-2004-17212

GRANT OF EXEMPTION

By letter dated February 17, 2004, Mr. A. Rogev, Director of Engineering, Aircraft Division, Bedek Group, Israel Aircraft Industries, Ltd., LOD 70100, Israel petitioned for an exemption from §§ 25.813(b)(3), 25.857(e) and 25.1447(c)(1). The exemption would allow carriage of two non-crewmembers (commonly referred to as supernumeraries) on Boeing Model 737 airplanes converted from a passenger to a freighter arrangement.

The petitioner requests relief from the following regulations:

> Section 25.813(b), at Amendment 25-88, requires that each emergency exit addressed by § 25.810(a) have adjacent assist space.
>
> Section 25.857(e), at Amendment 25-93, requires, in pertinent part, that when a Class E cargo compartment is installed on an airplane, the airplane is to be used for carriage of cargo only.
>
> Section 25.1447(c)(1), at Amendment 25-87, requires, in pertinent part, the automatic presentation of oxygen-dispensing units to occupants before the cabin altitude exceeds 15,000 feet. The total number of dispensing units and outlets must exceed the number of seats by at least 10 percent. The extra units must be uniformly distributed throughout the cabin as practicable. There must be at least two oxygen-dispensing units connected to oxygen terminals in each lavatory.

Related sections of the regulations:

Section 121.583(a) contains, in pertinent part, a listing of categories of people who may be carried on board an airplane in part 121 service without complying with all the passenger-carrying requirements of part 121.

The petitioner supports its request with the following information:

"1) Introduction

"IAI has developed and certified by the CAAI (STC No. SA136SF) and by the FAA (STC No. ST01566LA) a major modification of a B737-300 aircraft from passenger to a special freighter (SF) configuration. In relation to the above IAI has applied for and has been granted an exemption (Ref. FAA exemption No. 8174) from meeting certain requirements of FAR 25 related to the carriage of two supernumeraries on the flight deck. IAI has later submitted a request to amend the subject STC in order to add an alternate configuration, which replaces the 9g net by a 9g rigid barrier and provides seats for the two supernumeraries in the compartment created between the cargo barrier (which serves also as a smoke partition) and the flight deck.

"IAI is requesting for the amended STC alternate configuration to be granted an exemption as detailed herein, similar to the one granted for the 9g net configuration."

"The exemption is requested for all B737 aircraft modified to freighter under the IAI STC to B737-300SF, which will have a rigid 9g barrier.

"a. FAR 25 Affected Sections

- FAR 25.813 Amdt 88 *Emergency Exit Access* (b)(3) requires adequate space at one side of any other emergency exit to assist passengers in descending from the exit.
- FAR 25.857 Amdt 93 *Cargo Compartment Classification* (e) requires that when a class E Cargo Compartment is installed on an airplane the airplane is used for transport of cargo only.
- FAR 25.1447(c)(l) Amdt 87 *Equipment Standards for Oxygen Dispensing Units* requires automatic presentation of oxygen dispensing units to the passengers in case of cabin pressure altitude above 15000 ft.

"2) IAI Conversion -Configuration description with 9g rigid barrier

"a) Fight Deck Occupancy and seating arrangement

"The original IAI B737-300SF STC has been granted an exemption allowing the use of the flight deck two existing observer seats by supernumerary persons. The amended STC alternate configuration creates a new compartment aft of the flight deck and places the two supernumeraries in the original passenger aircraft existing aft facing flight attendant seats, which are mounted on the lavatory wall near door 1L. The flight deck occupants shall remain as in the original PAX aircraft definition--two crew and two observers. Total airplane occupancy shall be six persons maximum. The rigid barrier will be also the smoke partition for the occupied area of the airplane.

"b) Emergency Exits Arrangement and Accessibility (See Figure 1)

"With the rigid 9g barrier there is no need to modify the existing original aircraft emergency egress means. Both doors 1L and 1R remain active with their slides, markings and accessibility (on the 9g net configuration only door and slide 1R were available). These doors will be the primary emergency exit means for flight deck occupants and for the supernumeraries. Flight deck windows are not modified and remain in the original state (both openable from inside, window 2R also openable from outside). Due to the 9g-barrier location, however, there is no space for an attendant assist near door 1L.

"c) Oxygen Equipment

"The flight deck system is certified in the original aircraft for the four flight deck occupants.

"For the two supernumeraries seated in the supernumerary area, since the existing chemical generators supply only 12 minutes of oxygen, while in freighter smoke mode the airplane may be required to stay at 25Kft cabin altitude for a longer duration, the oxygen generators and the dropping masks have been replaced by two portable bottles with a flexible hose and a mask. The bottles and the masks are installed within reach of the seated supernumeraries. A lighted sign 'Use Oxygen' in front of the supernumeraries in combination with a warning over the audio system will be operated automatically by loss of cabin pressure at cabin altitude above 15Kft. Lavatory oxygen generator remains in original state as in the SF configuration.

"3) Requested exemption

- An exemption is requested from meeting FAR 25.813(b)(3) by not having space for assistance near the emergency exit door 1L.
- An exemption is requested from meeting FAR 25.857(e) to permit the flight of two non-crew passengers on a cargo aircraft with a class E cargo compartment.

- An exemption is requested from meeting FAR 25.1447(c)(1) by not having automatic presentation of the oxygen masks to the supernumeraries.

"4) Supporting Arguments

"a) In order to optimize the usage of the B737-300 as a cargo airplane, operators need to be able to accompany their cargo by people whose function is to take care of sensitive cargo and of loading and unloading tasks at any port of arrival. Their presence on the aircraft ensures they will be immediately available on arrival to take care of the cargo. This is very important for example in case of transport of perishable goods, items of value etc. It will also shorten the turnaround time at the airport gates and relieve some of the airport congestion.

"b) Some of the cargo items being transported may include hazardous materials, whereas the presence of personnel trained and qualified in their handling will enhance safety.

"c) Some of the locations serviced by the cargo carriers may not have ground maintenance centers capable of performing necessary tasks for the operator aircraft nor passenger flights to carry maintenance personnel to the location. The ability to transport the company maintenance personnel on the company flights increases the flexibility of operation.

"d) The requested exemptions do not reduce cabin safety, as discussed in Para 5.

"5) Cabin Safety Discussion

"The original flight deck of the B737 has been designed and certified for occupancy of four people - two crewmembers and two non-crewmembers.

"With the airplane converted to all freighter the same seating configuration remains on the flight deck.

"In the passenger configuration the flight deck occupants can use door 1R or door 1L for emergency egress, but they use them together with some additional twenty to fifty passengers coming in the opposite direction from the cabin. In the freighter configuration the flight deck occupants share the doors 1R and 1L with only two supernumeraries seated near door 1L. Thus, the level of safety provided to the supernumeraries on board is not less than that provided to passengers.

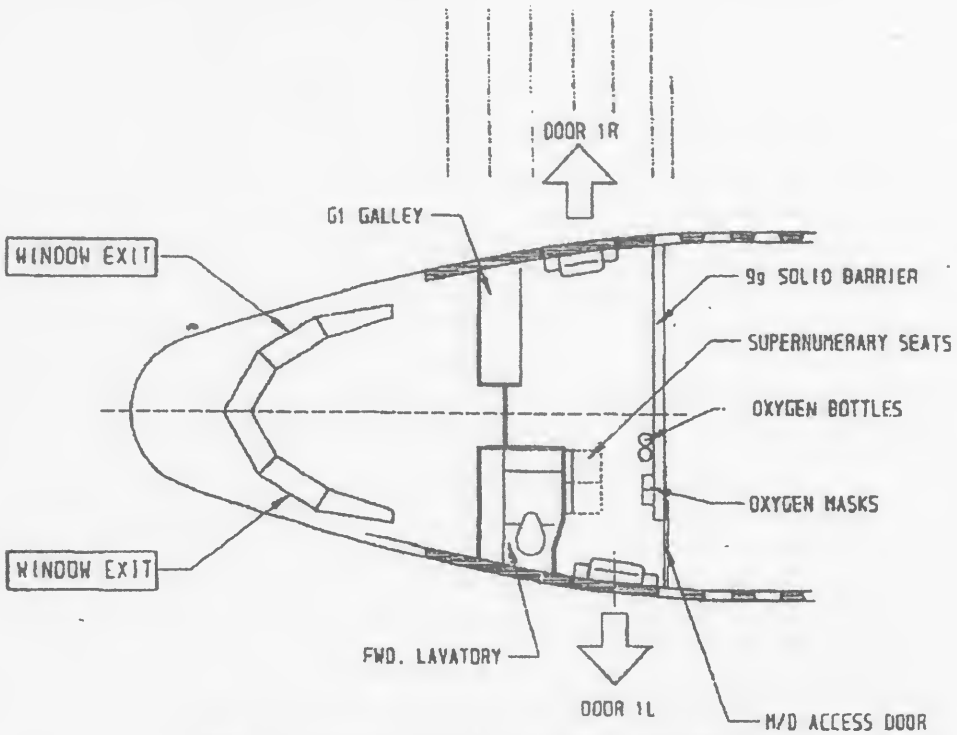
"The non-crewmembers will be limited to people in the categories of section 121.583(a)(1) thru (7). The non-crewmembers shall be trained in the necessary emergency egress procedures. These people shall be physically capable of using the rope descent means and will not need assistance by a crewmember. In addition the non- crewmembers shall be briefed preflight

about the emergency procedures by the crew. The necessary instructions shall be incorporated in the flight manual.

"The supernumeraries seated near door 1L will have automatic visual and audio warning about the need to use oxygen. The flight crew can also alert them vocally over the PA system. The training provided to the supernumeraries also ensures the appropriate level of safety.

"6) Public Interest

"The granting of the requested exemption will be in the public interest, as by allowing the carriage of the supernumerary persons aboard the cargo flights the operators will be able to optimize the safety conditions of the cargo operation, to make the operation more efficient and to improve the utility of the airplanes and the airports."



"Fig. 1: Emergency Exit Arrangement and 9g Barrier"

Notice and Public Procedure

On March 19, 2004, the FAA published a summary of this petition in the Federal Register for public comment. No comments were received.

The FAA's analysis is as follows:

The petitioner requests relief primarily from the requirements of § 25.857(e), which permits carriage of cargo only when a Class E cargo compartment is installed on the airplane. Class E cargo compartments are usually remote from the flightdeck and encompass the entire interior of the airplane. The means of controlling fires that might occur in the cargo compartment is to starve the fire of oxygen. This is done by depressurizing the airplane and maintaining an altitude that will not support combustion. Passengers are therefore not allowed on board such airplanes. The FAA has previously granted exemptions for carriage of people in addition to crew on freighter airplanes, provided certain conditions are met. These conditions have varied, depending on the airplane design and the number of people involved.

In all cases, there must be suitable means of preventing smoke penetration into occupied areas. The petitioner's design accounts for this by providing a cargo barrier, which will also act as a smoke barrier.

Because of the way that fire in the cargo compartment will be controlled, occupants should be only those people the operator has determined are physically fit, and who have been briefed on the use of emergency equipment. This limitation is consistent with previous approvals.

The certification regulations for transport category airplanes address airplane occupants as being either "crew" or "passengers." Because differences in training, physical capabilities, and other factors (such as familiarity with the airplane), the means required by part 25 to address emergency evacuation and emergency equipment differ for passengers and crewmembers. Supernumeraries are not crewmembers; therefore, they must be considered "passengers" by default, with respect to part 25.

Concerning the lack of an assist space adjacent to each exit, as required by § 25.813(b), the FAA has determined the two supernumeraries will have a higher level of training than a typical passenger, and will therefore have less need for crew assistance.

The supernumeraries should have an oxygen system that is comparable to that of passengers. However, considering the extra knowledge and training these people will have, it is not necessary to install an equivalent system. The petitioner proposes to provide supplemental oxygen to each occupant in a portable oxygen bottle. It is acceptable to provide supplemental oxygen in portable bottles; however, § 25.1447(c)(1) requires that the oxygen be "immediately available" to each seated occupant. Therefore, the oxygen bottles must be mounted on or immediately next to the seats, and each occupant must be able to put on a mask and activate oxygen flow while seated.

Section 25.1447(c)(1) also requires automatic presentation of the oxygen dispensing units. For seated passengers in typical passenger airplanes, the automatic presentation of masks throughout the cabin indicates the need to put on an oxygen mask. Supernumeraries on the petitioner's 737 airplanes will not have this indication. To provide for an acceptable level of safety, an automatically activated aural decompression signal must be immediately recognizable throughout the supernumerary seating area. Operation of this signal must be automatic with flightcrew manual action as a backup.

Supernumeraries must be trained on the location and use of the oxygen equipment and the signals for its use. Also, the supplemental oxygen equipment must be sized adequately for continuous and uninterrupted use during worst-case flight duration following a decompression.

Section 25.1447(c)(1) requires ten percent more oxygen masks than occupants. The rationale behind this requirement does not apply in this case.

The scope of this evaluation does not include consideration of supernumeraries entering the cargo compartment during flight. Such access would require additional limitations to provide an appropriate level of safety to the supernumeraries. An AFM limitation must be established that prohibits supernumeraries from being in the Class E compartment during flight.

In conclusion, the FAA has determined the existing regulations for type certification do not address occupants that are neither crew nor passengers, and an exemption from certain part 25 requirements is warranted to permit carriage of supernumeraries.

The Grant of Exemption

In consideration of the foregoing, I find that a grant of exemption is in the public interest and will not affect the level of safety provided by the regulations. Therefore, by the authority contained in 49 U.S.C. 40113 and 44701, delegated to me by the Administrator, Israel Aircraft Industries, Ltd., is granted an exemption from §§ 25.813(b)(3), 25.857(e) and 25.1447(c)(1). The exemption is granted to the extent required to permit type certification of Boeing Model 737-300 airplanes that have been converted from a passenger to a freighter arrangement. The following limitations apply and must be documented in the limitations section of the Airplane Flight Manual:

1. Occupancy outside the flightdeck is restricted to a maximum of two persons.

2. Supernumeraries are limited to the categories specified in § 121.583(a)(1) through (a)(7).

3. A flight crewmember must brief each supernumerary on the use of the exits and emergency equipment prior to each flight.

4. The operator must determine that each supernumerary is physically able to perform the necessary emergency procedures.

5. A supplemental oxygen bottle with a mask connected to it must be mounted on or immediately next to each supernumerary seat and be located so each occupant can put on the mask and activate oxygen flow while seated. The supernumeraries must be trained in the use of these oxygen units.

6. An automatically activated aural decompression signal immediately recognizable throughout the supernumerary seating area must be provided to notify supernumeraries when to don oxygen masks. The flightcrew must be provided with a manual means to activate the signal if the automatic system fails. This signal and the accompanying procedures for putting on a mask and activating oxygen flow must be included in the training and preflight briefing.

7. Supernumeraries are prohibited from being in the cargo area during flight. The preflight briefing must inform supernumeraries of this requirement.

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

/s/ Franklin Tiangsing
Acting Manager
Transport Airplane Directorate
Aircraft Certification Service

[FR Doc. 04–15039 Filed 7–1–04; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–51]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 22, 2004.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17629 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Annette Kovite (425–227–1262), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or John Linsenmeyer (202–267–5174), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on June 24, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2004–17629.
Petitioner: Gulfstream Aerospace.
Section of 14 CFR Affected: 14 CFR 25.785(b).
Description of Relief Sought: Exemption from the general occupant protection requirements of 14 CFR 25.785(b) to allow installation of single and multiple occupancy side-facing divans in Gulfstream 150 airplanes.

[FR Doc. 04–15040 Filed 7–1–04; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–52]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 22, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA–2003–15183 by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1 (202) 493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer (202) 267–5174, Tim Adams (202) 267–8033, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on June 28, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2003–15183.
Petitioner: Farsound Engineering, Ltd.
Sections of 14 CFR Affected: 14 CFR 145.47 (b).
Description of Relief Sought: To permit contracting of fastener plating processes for certain aircraft engines to a contractor that is not certified by the FAA.

[FR Doc. 04–15118 Filed 7–1–04; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–53]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application,

processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 22, 2004.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17235–1 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Les Taylor ((816) 329–4134), Small Airplane Directorate (ACE–111), Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–207), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on June 28, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2004–17235–1.
Petitioner: Super 18 Corporation.
Section of 14 CFR Affected: 14 CFR 23.562
Description of Relief Sought: To permit the Super 18 Corporation to produce the Super 18–160 aircraft without complying with the emergency landing dynamic conditions requirements of part 23.

[FR Doc. 04–15119 Filed 7–1–04; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Technical Standard Order (TSO)–C26d, Aircraft Wheels, Brakes and Wheel/Brakes Assemblies for Parts 23, 27, and 29 Aircraft

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed revision to Technical Standard Order (TSO) C–26c, Aircraft Wheels and Wheel-Brake Assemblies, with Addendum I, to TSO–C26d, Aircraft Wheels, Brakes and Wheel/Brakes Assemblies for Part 23, 27, and 29 Aircraft. This proposed revision tells persons seeking a TSO authorization or letter of design approval what minimum performance standards (MPS) their aircraft wheels, brakes, and wheel/brake assemblies for Part 23, 27, and 29 aircraft must meet to be identified with the applicable TSO marking.

DATES: Comments must be received on or before August 2, 204.

ADDRESSES: Send all comments on the proposed technical standard order to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch, AIR–120, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Mr. George Soteropoulos. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. George Soteropoulos, AIR–120, Room 815, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 267–9796, FAX: (202) 202–5340. Or, via e-mail at: *george.soteropoulos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed revision may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

Current TSO–C26c, Aircraft Wheels and Wheel-Brake Assemblies, with Addendum I, dated 5/18/84, prescribes the MPS that Part 23, 25, 27, and 29 aircraft wheels and wheel-brake assemblies must meet to be identified with the applicable TSO marking TSO–C135, Transport Airplane Wheels and Wheel and Brake Assemblies, issued on 5/2/02, prescribes the MPS for Part 25 airplanes as of that date. This proposed revision to TSO–C26c prescribes the MPS for Parts 23, 27, and 29 for new applications, and major design changes to aircraft wheels, brakes and wheel/brake assemblies, submitted after the effective date of this proposed TSO–C26d. This proposed revision also reflects the latest industry practices.

How To Obtain Copies

You may get a copy of the proposed TSO–C26d from the Internet at *http://av-info.faa.gov/tso/Tsopro/Proposed.htm.* See section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address if requesting a copy by mail. Copies of SAE ARP5381 may be purchased from the Society of Automotive Engineers, Inc., Department 331, 400 Commonwealth Drive, Warrendale, PA 15096–0001. Copies can also be obtained through the SAE Internet Web site at: *www.sae.org.*

Issued in Washington, DC, on June 25, 2004.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 04–15042 Filed 7–04–04; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Agency Information Collection Activities: Submission for OMB Review

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for review and comment. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on April 8, 2004 (69 FR 18672). We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 2, 2004.

ADDRESSES: You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Shemaka, (202) 366–1575, Office of Infrastructure, Office of Bridge Technology, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Structure Inventory and Appraisal Sheet.

OMB Control Number: 2125–0501 (Expiration Date: July 31, 2004).

Abstract: The collection of the bridge information contained on the Structure Inventory and Appraisal Sheet (SI&A) is necessary to satisfy the requirements of Title 23 United States Code 144 and 151, and the Code of Federal Regulations, 23 Highways Part 650, Subpart C, National Bridge Inspection Standards (NBIS) and Subpart D, Highway Bridge Replacement and Rehabilitation Program. The National Bridge Inspection Standards require bridge inspection and reporting at regular intervals for all bridges located on public roads. The bridge inspection information is provided to the Federal Highway Administration (FHWA) on the Structure Inventory and Appraisal (SI&A) Sheets. The NBIS information is used for multiple purposes, including: (1) The determination of the condition of the Nation's bridges; (2) as a basis for setting priorities for the replacement or rehabilitation of bridges under the Highway Bridge Replacement and Rehabilitation Program (HBRRP); and (3) for apportioning HBRRP funds to the States for bridge replacement or rehabilitation. In addition, the information is used for strategic national defense needs and for preparing the report to Congress on the status of the Nation's highway bridges and funding under the HBRRP.

Respondents: 50 State Transportation Departments, the District of Columbia and Puerto Rico.

Frequency: Biannual inspections and annual reporting.

Estimated Total Annual Burden: The estimated total annual burden is 540,000 hours. The average burden is two hours to complete each SI&A sheet on the approximate 270,000 bridges that are inspected annually. The total bridge inventory (rounded to 600,000) requires biannual inspections. Approximately 10-percent of the 270,000 bridges that are inspected each year receive an extended inspection. Some States voluntarily inspect bridges more frequently; however, these estimates do not include this information.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: June 28, 2004.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 04–15045 Filed 7–1–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of Environmental Impact Statement for Transportation Improvements Within the Southeast Corridor Between Nashville and Murfreesboro, TN

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) is issuing this notice to advise interested agencies and the public that, in accordance with the National Environmental Policy Act, FTA and the Nashville Area Metropolitan Planning Organization (MPO) will prepare an Environmental Impact Statement (EIS) for proposed transportation improvements in the Southeast Corridor between downtown Nashville in Davidson County, Tennessee and Murfreesboro in Rutherford County, Tennessee.

DATES: *Comment Due Date:* Written comments on the scope of the EIS, including the alternatives and impacts to be considered, should be sent to the address listed under **ADDRESSES** below by August 14, 2004.

Interagency Scoping Meeting: An interagency scoping meeting will be held on Wednesday, July 14, 2004, from 1:30 to 3:30 p.m. at the Nashville Downtown Library, 615 Church Street, Conference Room 1, Nashville, Tennessee 37219. Representatives of agencies likely to have an interest in, or jurisdiction over any aspect of the project will be individually contacted and invited to the meeting.

Public Scoping Meetings: Public scoping meetings will be held on: Monday, July 12, 2004, from 4 p.m. to 7 p.m., at Smyrna Town Centre, 100 Sam Ridley Parkway, Smyrna, Tennessee 37167; Tuesday, July 13, 2004, from 4 p.m. to 7 p.m. at Rutherford County Courthouse, Courthouse Square, Murfreesboro, Tennessee 37130; and Wednesday, July 14, 2004 from 11 a.m. to 1 p.m. at the Nashville Downtown Library, 615 Church Street, Conference Room 1, Nashville, Tennessee 37219.

All scoping meetings will be held in wheelchair-accessible locations. If additional assistance, such as signing for the hearing impaired, is needed, please notify Jim McAteer of the Nashville Area MPO as indicated below under **ADDRESSES.**

ADDRESSES: Written comments on the scope of the EIS, including the alternatives to be analyzed and the impacts to be considered, should be sent by August 14, 2004 to: Jim McAteer, Transit Planner, Nashville Area Metropolitan Planning Organization, 730 2nd Ave South, Nashville, TN 37201, Phone (615) 862–7204, Fax (615) 862–7209, e-mail *mcateer@nashvillempo.org.* Also contact Mr. McAteer to be placed on the project mailing list or to request a copy of the scoping information packet which is also on the Nashville MPO website at www.nashvillempo.org. The locations of the scoping meetings are given above under **DATES.**

FOR FURTHER INFORMATION CONTACT: Mr. Doug Frate, Federal Transit Administration, 61 Forsyth Street, SW., Suite 17T50, Atlanta, GA 30303. Phone: (404) 562–3514.

SUPPLEMENTARY INFORMATION: FTA, the Federal lead agency, in cooperation with the Nashville Area MPO, the local

lead agency, is preparing an EIS for proposed transportation improvements in the corridor between downtown Nashville in Davidson County, Tennessee and Murfreesboro in Rutherford County, Tennessee, known as the Southeast Corridor. Issues and alternatives will be identified through a scoping process in accordance with the regulations implementing the National Environmental Policy Act (NEPA) of 1969, as amended.

I. Scoping

The Nashville Area MPO and FTA invite interested individuals, organizations, and Federal, State, and local agencies to participate in scoping the EIS. Scoping participants are invited to comment on the alternatives to be addressed; the modes and technologies to be evaluated; the alignments and station locations to be considered; the environmental, social, and economic impacts to be analyzed; and the evaluation approach to be used to select a locally preferred alternative. Interested individuals, organizations, or agencies may propose the consideration of an additional, specific alternative or the study of a specific environmental effect associated with an alternative. Scoping comments should focus on the issues and alternatives for analysis, and not on preference for particular alternatives. (Individual preference for particular alternatives should be communicated during the comment period for the Draft EIS.) Comments may be made at the scoping meetings or in writing no later than August 14, 2004, as described in **DATES** and **ADDRESSES** above. After the scoping process, the MPO will conduct a planning Alternatives Analysis to decide what transportation improvements in the Southeast Corridor should be incorporated into its regional transportation plan. The EIS will incorporate the planning Alternatives Analysis by reference and evaluate the surviving alternatives in detail.

II. Description of Study Area

The study area, known as the Southeast Corridor, links the cities of Nashville in Davidson County and LaVergne, Smyrna and Murfreesboro in Rutherford County, all of which are within the MPO's area of responsibility for transportation planning. Nashville is the second largest city in Tennessee with a population of roughly 570,000. The central business district houses the Tennessee State Offices, music attractions, and the Tennessee Titans football team which brings visitors from across the state. Nashville draws approximately 132,000 commuters from surrounding counties, about 25,000 of whom come from Rutherford County. Murfreesboro is the southernmost terminus of the study corridor and lies about 30 miles southeast of Nashville. It has a population of roughly 75,000 and is home to Middle Tennessee State University (MTSU), which has an enrollment of about 21,000, of whom 3,500 live on the campus. Smyrna has a population of approximately 25,600 and LaVergne has an approximate population of 18,700. The estimated population along the corridor is 260,050.

The two primary north-south thoroughfares within the corridor are Murfreesboro Road, also known as U.S. 41/70S, and Interstate 24 (I–24). This corridor experiences significant levels of traffic congestion within the 30-mile segment of I–24 between Nashville and Murfreesboro, handling between 91,000 and 133,000 average daily annual trips. Murfreesboro Road has between 20,600 and 37,400 average annual daily trips. Some of the potential trip attractors/generators along the corridor include Nashville International Airport, and MTSU and major employers such as Dell Computer and regional shopping malls, commercial services, office parks, hospitals and the downtown core of Nashville. LaVergne and Smyrna form a major employment area known as "Interchange City," which is home to a Nissan manufacturing plant, Bridgestone and other major industries.

Few options exist in the corridor to provide alternatives to driving in heavily congested conditions. Improvements are needed to address traffic volumes that increase annually and the corresponding traffic congestion that is projected to occur. The planning Alternatives Analysis will examine alignments, technologies, station locations, cost, funding, ridership, economic development, land use, engineering feasibility, and environmental concerns. During this Alternatives Analysis process, the MPO will also evaluate options for transportation improvements in this corridor that do not involve significant capital investment.

III. Alternatives

The alternatives initially proposed for consideration in the Southeast Corridor include:

1. No Action Alternative: Based on projects included in the local transportation improvement plan (TIP) and financially-constrained long-range transportation plan, with no new change to transportation services or facilities in the area beyond already committed projects.

2. Transportation System Management Alternative: A low-cost alternative will be developed to include minor improvements to intersections, traffic signals, demand management and system management programs, bus services and facilities and other modifications to the transportation system that can be made without major investments in infrastructure or equipment.

3. Build Alternatives: Three alternatives, combining various types of major investments to meet the travel needs of the corridor, will be developed. These "build" alternatives most likely will include the development of busway or bus rapid transit, light rail transit, and conventional commuter rail technology along various existing rights-of-way in the corridor.

Based on public and agency input received during scoping, variations of the above alternatives and other transportation-related improvement options, both transit and non-transit, will be considered for the Southeast Corridor.

IV. Potential Impacts for Analysis

The FTA and MPO will consider all social, economic, and environmental impacts associated with the alternatives under consideration. Potential environmental issues to be addressed include: land use, historic and archaeological resources, traffic and parking, noise and vibration, environmental justice, floodplain encroachments, coordination with other transportation and economic development projects, and construction impacts. Other issues to be addressed include: natural areas, ecosystems, rare and endangered species, water resources, air quality, surface water and groundwater quality, contaminated sites, displacements and relocations, and parklands. The potential impacts will be evaluated for both the construction period and the long-term operations period of each alternative considered. In addition, the cumulative effects of the alternatives on major resources identified in the study area will be analyzed. Measures to avoid or mitigate any significant adverse impacts will be developed.

V. FTA Procedures

In accordance with FTA policy, all Federal laws, regulations, and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508, and 23 CFR part 771), the Clean Air Act, section 404 of the Clean

Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and section 4(f) of the DOT Act, will be addressed to the maximum extent practicable during the NEPA process. In addition, the MPO may seek section 5309 New Starts funding for the project and will therefore be subject to the FTA New Starts regulation (49 CFR part 611). This New Starts regulation requires the submission of certain specified information to FTA to support a request to initiate preliminary engineering, which is normally done in conjunction with the NEPA process.

After the scoping process, the MPO will conduct a planning Alternatives Analysis to decide what transportation improvements in the Southeast Corridor should be incorporated into its regional transportation plan. The planning Alternatives Analysis will examine alignments, technologies, station locations, cost, funding, ridership, economic development, land use, engineering feasibility, and environmental concerns. The Draft EIS will incorporate the planning Alternatives Analysis by reference and evaluate the surviving alternatives in detail. After its publication, the Draft EIS will be available for public and agency review and comment, and public hearings will be held on the Draft EIS. The Final EIS will consider comments received during the Draft EIS public review and will identify the preferred alternative. Additional opportunities for public involvement will be provided throughout all phases of project development.

Issued on: June 28, 2004.

Hiram J. Walker,

Regional Administrator.

[FR Doc. 04–15054 Filed 7–1–04; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 646]

Rail Rate Challenges in Small Cases

AGENCY: Surface Transportation Board.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board will hold a public hearing on Wednesday, July 21, 2004, at its offices in Washington, DC, to provide interested persons an opportunity to express their views on the subject of Board processing of rail rate challenges that are not suitable for handling under the Board's constrained market pricing procedures. Persons wishing to speak at the hearing should notify the Board in writing.

DATES: The public hearing will take place on Wednesday, July 21, 2004. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible but no later than July 9, 2004. Each speaker should also file with the Board his/her written testimony by July 16, 2004.

ADDRESSES: All notices of intent to participate and testimony may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's *http://www.stb.dot.gov* Web site, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (referring to STB Ex Parte No. 646) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1609. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.)

SUPPLEMENTARY INFORMATION: The Board will hold a public hearing to provide a forum for the expression of views by rail shippers, railroads, and other interested persons, regarding rail rate challenges in small cases to be considered by the Board. This hearing will provide a forum for the oral discussion of any proposals that interested persons might wish to offer for handling small cases involving a challenge to the reasonableness of rates charged by a rail carrier. The Board is also interested in participants' views on how "small rate cases" should be defined or identified.

Date of Hearing. The hearing will begin at 10 a.m. on Wednesday, July 21, 2004, in the 7th floor hearing room at the Board's headquarters in Washington, DC, and will continue, with short breaks if necessary, until every person scheduled to speak has been heard.

Notice of Intent To Participate. Any person wishing to speak at the hearing should file a notice of intent to participate and a requested time allotment, as soon a possible but no later than July 9, 2004.

Testimony. Each speaker should file written testimony with the Board by July 16, 2004.

Board Releases and Live Audio Available Via the Internet. Decisions and notices of the Board, including this notice, are available on the Board's Web site at *http://www.stb.dot.gov.* This hearing will be available on the Board's Web site by live audio streaming. To access the hearing, click on the "Live Audio" link under "Information Center" at the left side of the home page beginning at 10 a.m. on July 21, 2004.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: June 29, 2004.

Vernon A. Williams,

Secretary.

[FR Doc. 04–15094 Filed 7–1–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 422X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Snohomish County, WA

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon and discontinue service over a 0.99-mile line of railroad between milepost 38.01 and milepost 39.00 in Snohomish, Snohomish County, WA. The line traverses United States Postal Service Zip Code 68290.[1]

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. The applicant initially indicated a proposed consummation date of August 2, 2004, but because the verified notice was filed on June 15, 2004, consummation may not take place prior to August 4, 2004. By facsimile filed on June 18, 2004, applicant's representative confirmed that the consummation date will be August 4, 2004.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 4, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 12, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 22, 2004, with: Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001.[4]

A copy of any petition filed with the Board should be sent to applicant's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by July 9, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339]. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by July 2, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: June 23, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–14682 Filed 7–1–04; 8:45 am]

BILLING CODE 4915–01–P

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

[4] Each trail use request must be accompanied by the filing fee, which is set at $200. *See* 49 CFR 1002.2(f)(27).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 421X)]

The Burlington Northern and Santa Fe Railway Company-Abandonment Exemption-in Crow Wing County, MN

On June 14, 2004, the Burlington Northern and Santa Fe Railway Company (BNSF) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 1.60-mile line of railroad extending from milepost 0.00 to milepost 1.60 in and near Brainerd, in Crow Wing County, MN. The line traverses United States Postal Service ZIP Code 56401.

The line does not contain federally granted rights-of-way. Any documentation in BNSF's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 1, 2004.

Any offer of financial assistance (OFA) will be due no later than 10 days after service of a decision granting the petition for exemption. *See* 49 CFR 1152.27(b)(2). Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than July 22, 2004. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–6 (Sub-No. 421X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Michael Smith, 311 S. Wacker Drive, Suite 3000, Chicago, IL 60606–6677. Replies to the BNSF petition are due on or before July 22, 2004.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days after the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: June 24, 2004.

By the Board, David M. Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–14964 Filed 7–1–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–870X]

Butler County, Kansas-Abandonment Exemption-in Butler County, KS

Butler County, Kansas (County) has filed a notice of exemption under 49 CFR part 1152 subpart F-*Exempt Abandonments* to abandon its entire 10.6-mile line of railroad, between milepost 483.62, at Augusta, and milepost 494.22, near Andover, in Butler County, KS. The line traverses United States Postal Service ZIP Codes 67010 and 67002.[1]

The County has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line during the past 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

Where, as here, the carrier is abandoning its entire line, the Board does not normally impose labor protection under 49 U.S.C. 10502(g), unless the evidence indicates the existence of: (1) A corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. *See Wellsville, Addison & Galeton R. Corp.-Abandonment,* 354 I.C.C. 744 (1978); and *Northampton and Bath R. Co.-Abandonment,* 354 I.C.C. 784 (1978). The County states that "no corporate affiliate of the County will continue substantially similar rail operations and there is no corporate parent that would benefit from the proposed abandonment." (Citations omitted). Accordingly, employee protection conditions will not be imposed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 4, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 12, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 22, 2004, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to the County's representative: Karl Morell, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

The County has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by July 9, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), the County shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by the County's filing of a notice of consummation by July 2, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 24, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–14963 Filed 7–1–04; 8:45 am]

BILLING CODE 4915–01–P

[1] The County acquired the line by donation from The Burlington Northern and Santa Fe Railway Company in Butler County, Kansas-Acquisition Exemption-The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34139 (STB served Jan. 11, 2002).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Providence Washington Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 16 to the Treasury Department Circular 570; 2003 Revision, published July 1, 2003 at 68 FR 39186.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, section 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 68 FR 39216, July 1, 2003.

With respect to any bonds currently in force with the above listed Company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms. treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04643–2.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6507, Hyattsville, MD 20782.

Dated: June 25, 2004.

Vivian L. Cooper,

Director, Financial Accounting and Services Division.

[FR Doc. 04–15123 Filed 7–1–04; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Name Change and Change in State of Incorporation—Travelers Casualty and Surety Company of Illinois

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 17 of the Treasury Department Circular 570; 2003 Revision, published July 1, 2003, at 68 FR 39186.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6779.

SUPPLEMENTARY INFORMATION: Travelers Casualty and Surety Company of Illinois has formally changed its name to Travelers Casualty Insurance Company of America and has redomesticated from the state of Illinois to the state of Connecticut, effective January 1, 2004. The Company was last listed as an acceptable surety on Federal bonds at 68 FR 39222, July 1, 2003.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2003 revision, on page 39222 to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04643–2.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: June 25, 2004.

Vivian Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 04–15122 Filed 7–1–04; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13094

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13094, Recommendation for Juvenile Employment with the Internal Revenue Service.

DATES: Written comments should be received on or before August 31, 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 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: Recommendation for Juvenile Employment with the Internal Revenue Service.

OMB Number: 1545–1746.

Form Number: Form 13049.

Abstract: The data collected on Form 13094 provides the Internal Revenue Service with a consistent method for making suitability determinations on juveniles for employment within the Service.

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 and not-for-profit institutions.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 208.

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: June 25, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–15126 Filed 7–1–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 69, No. 127
Friday, July 2, 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 HOUSING AND URBAN DEVELOPMENT

24 CFR Part 35

[Docket No. FR–3482–C–10]

RIN 2501–AB57

Requirements for Notification, Evaluation, and Reduction of Lead-Based Paint Hazards in Housing Receiving Federal Assistance and Federally Owned Residential Property Being Sold, Conforming Amendments and Corrections

Correction

In rule document 04–13873 beginning on page 34262 in the issue of Monday, June 21, 2004, make the following correction:

§35.110 [Corrected]

On page 34271, in §35.110, in the third column, in the first full paragraph, in the fifth and sixth lines, remove the duplicated text "*Visual assessment* means looking for, as applicable.".

[FR Doc. C4–13873 Filed 7–1–04; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
July 2, 2004

Part II

Environmental Protection Agency

Thiram; Availability of Revised Risk Assessments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0183; FRL–7366–7]

Thiram; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of EPA's process for making pesticide reregistration eligibility decisions and tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the human health and environmental risk assessments and related documents for thiram. This notice also starts a 60–day public comment period during which the public is encouraged to submit comments on EPA's preliminary assessment of benefits of thiram and risk management ideas or proposals for thiram. This action is in response to a joint initiative between EPA and the U.S. Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for all pesticides. Comments are to be limited to issues directly associated with thiram and its benefits raised by the risk assessments, potential risk reduction options, or other documents placed in the docket. By allowing access and opportunity for comment on the risk assessments and potential risk reduction options, EPA is seeking to strengthen stakeholder involvement and help ensure that our decisions under FQPA are transparent and based on the best available information.

DATES: Comments, identified by docket ID number OPP–2004–0183, must be received on or before August 31, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Craig Doty, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0122; fax number: (703) 308–8041; e-mail address: *doty.craig@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general but may be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the agrochemical industry; pesticide users; and members of the public interested in pesticide use on food. This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to you or a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0183. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the

close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0183. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0183. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0183.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2003–0183. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide 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 docket ID 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.

II. Background

EPA has revised the preliminary assessments of the risks of thiram and identified areas of concern that may require risk mitigation measures. The Agency's dietary, worker, and ecological risk estimates for thiram indicate risks of concern. The Agency's dietary risk estimate indicates acute risk of concern for the general U.S. population and all population subgroups as a result of foliar treatments of apples, peaches, and strawberries. EPA's potential risk mitigation measures for foliar treatments may focus on the apple and strawberry uses because thiram's main foliar uses are on these crops.

For ecological effects, Agency estimates of exposure resulting from thiram's foliar usage and turf applications on sod farms, golf courses, parks, and athletic fields, indicate acute risk to freshwater fish and invertebrates, estuarine/marine fish and invertebrates, reproductive risk to birds, and indirect effects to mammals. These risk estimates also apply to endangered species. Agency estimates of exposure strongly suggest that thiram-treated seed may pose a risk of causing reproductive impairments to wild bird species. EPA received additional information submitted during the Phase 3 comment period pertaining to thiram's use on seed and impact to avian species, but has not completed the review of the data. This additional data may be used to further refine the risk estimates to birds from thiram-treated seed.

Further, worker risks of concern include some loading scenarios for aerial granular application, some handheld equipment use, and a few commercial and on-farm seed treatment scenarios.

EPA has compiled information on thiram's uses and usages, which will be used in conjunction with comments received during the Phase 3 public comment period to perform a benefits analysis. EPA's preliminary findings show several other useful protectant fungicides are available for foliar use based on a review of the USDA Crop Profiles for California, Oregon, and Washington apples, and California and Florida strawberries, and communications with several state crop specialists on the relative importance of thiram in these states.

Thiram's importance for uses on non-residential turf on sod farms and golf courses appears to be relatively low. Thiram's use on golf courses may be less than 0.1% of total golf course acres treated. Thiram's use on sod farms appears to be negligible and may be less than 1% of acres treated.

Thiram's importance for use on seed seems relatively high. Up to 631,000 pounds of thiram (active ingredient) per year are used to treat about 1.3 billion pounds of seed. About 24 million acres are planted with thiram-treated seed. The five crops reflecting the distribution of the acres planted with seed treated with thiram in order of total acres planted are: Cotton, wheat, barley, oats, and sugar beets. These five crops comprise a total of greater than 98% of all acres planted with thiram-treated seed.

EPA has identified some possible preliminary risk reduction options for thiram. The Agency is awaiting additional data on thiram that could be used to refine the acute dietary risk assessment; however, based on the current assessment, eliminating the uses on both strawberries and apples would bring the dietary risk below the Agency's level of concern. This option would also reduce the worker and ecological risks posed by the foliar usage of thiram.

To address the ecological risks posed by thiram's usage on turf, an option would be to limit the use of thiram to golf course tees and greens. In relation to addressing these risk concerns, the technical registrant has submitted a voluntary letter of cancellation that eliminates the uses of thiram for turf applications to parks, athletic fields, and commercial landscapes; and all homeowner and retail uses as for animal repellency on residential lawns or turf, turf being grown for sale or other commercial use such as sod.

To address the risk concerns for workers, an option would be to add additional levels of personal protection (e.g., the use of a respirator) or to eliminate certain application methods (e.g., high pressure handwand), or use sites (e.g., on-farm seed treatment). In relation to addressing these risk concerns, the technical registrant has submitted a voluntary letter of cancellation that eliminates the on-farm seed treatment of peanuts.

EPA is investigating additional risk reduction options to mitigate ecological risks of concern posed by the seed treatment uses of thiram. Commenters are encouraged to discuss the feasibility of restricting the broadcasting of treated seed and means to ensure that spillage from drilled seeding applications is removed from the field or buried, as has been required by the European Union. Alternatively, restrictions could be placed on which types of seed are treated, the areas of the country where thiram-treated seed could be planted, and/or the time of year it is planted. The Agency encourages stakeholders to submit risk management proposals.

EPA has identified the areas of risk posed by thiram as it is currently labeled and seeks stakeholder input on how thiram use and usages can be modified to reduce these risks. EPA encourages stakeholder input on the following items to assist in developing a risk mitigation plan:

1. Describe how you use thiram during your production cycles. What production changes would you make if thiram were not available including alternative fungicides? What specific pests are being targeted?

2. How effective are the alternatives to thiram? What are the differences in costs associated with the use of thiram alternatives? What impact, if any, do you observe to quality or yield?

3. What is the maximum application rate that you use and how often do you use it?

4. How important is thiram for the foliar, turf, and seed treatment uses?

5. How can the Agency reduce ecological risks posed by thiram-treated seed?

6. How can the Agency reduce occupational risks posed by thiram (e.g., sewing bags of commercially treated seed or applying thiram with high pressure handwand)?

III. What Action is the Agency Taking?

EPA is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the risk assessments and preliminary risk reduction options for thiram. These documents have been developed as part of the public participation process that EPA and USDA are using to involve the public in the reassessment of pesticide tolerances under FQPA, and the reregistration of individual pesticides under FIFRA. A goal of the public participation process has been to find a more effective way for the public to participate at critical junctures in the Agency's development of pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the thiram preliminary risk assessments, which were released to the public on January 26, 2004 (69 FR 3581) (FRL–7341–2), through notices in the **Federal Register**. The Agency's human health and environmental risk assessments and other related documents for thiram are available in the individual pesticide docket. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for thiram.

In addition, this notice starts a 60–day public participation period during which the public is encouraged to submit risk management proposals or other comments on risk management for thiram. The Agency is providing an opportunity, through this notice, for interested parties to provide written comments on risk management proposals or ideas for thiram. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific thiram use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of modifications in use, and usages of thiram or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commenters may suggest ways to reduce environmental exposure, e.g., exposure.

All comments should be submitted by August 31, 2004, using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**. Comments will become part of the Agency record for thiram.

List of Subjects

Environmental protection, Thiram, Pesticides, Tolerance reassessment.

Dated: June 29, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–15179 Filed 7–1–04; 8:45 am]

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Federal Register

Friday,
July 2, 2004

Part III

Federal Trade Commission

16 CFR Parts 315 and 456
Contact Lens Rule; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 315 and 456

RIN 3084–AA95

Contact Lens Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Trade Commission (the "Commission") issues a Final Rule implementing the Fairness to Contact Lens Consumers Act (the "Act"), 15 U.S.C. 7601 *et seq.*, which provides for the availability of contact lens prescriptions to patients and the verification of contact lens prescriptions by prescribers. This document also implements two clerical amendments to the Commission's Ophthalmic Practices Rules to clarify the distinction between those Ophthalmic Practices Rules and the Contact Lens Rule.

DATES: *Effective Date:* The Rule will become effective on August 2, 2004.

ADDRESSES: Requests for copies of the Rule and the Statement of Basis and Purpose should be sent to the Commission's Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including the Rule and Statement of Basis and Purpose, are also available at the Commission's Web site, *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Division of Advertising Practices, Thomas Pahl or Char Pagar [(202) 326–3528], Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Contact Lens Rule ("the Rule") implements the requirements of the Fairness to Contact Lens Consumers Act ("the Act"), 15 U.S.C. 7601–7610. Specifically, the Rule: (1) Requires prescribers (such as optometrists and ophthalmologists) to provide patients with a copy of their contact lens prescription immediately upon completion of a contact lens fitting; (2) requires prescribers to provide or verify contact lens prescriptions to any third party designated by a patient; (3) prohibits prescribers from placing certain conditions on the release or verification of a contact lens prescription; (4) limits the circumstances under which a provider can require payment for an eye exam prior to releasing a contact lens prescription to a patient; (5) requires contact lens sellers to either obtain a copy of a patient's prescription or verify the prescription before selling contact lenses; (6) addresses the issue of private label contact lenses; (7) sets minimum expiration dates for contact lens prescriptions; (8) prohibits representations that contact lenses may be obtained without a prescription; (9) prohibits prescribers from using or requiring patients to sign any waiver or disclaimer of liability for the accuracy of an eye examination; (10) defines relevant terms; (11) establishes that violations of the proposed Rule will be treated as violations of a rule defining an unfair or deceptive act or practice under section 18 of the Federal Trade Commission Act; and (12) provides that State and local laws and regulations are preempted under certain circumstances.

Statement of Basis and Purpose

I. Introduction

On December 6, 2003, President Bush signed the Act into law.[1] Among other things, the Act requires that prescribers, including optometrists and ophthalmologists, provide contact lens prescriptions to their patients upon the completion of a contact lens fitting.[2] The Act also mandates that prescribers verify contact lens prescriptions to third-party contact lens sellers who are authorized by consumers to seek such verification.[3] The Act directs the Commission to prescribe implementing rules.[4] Any violation of the Act or its implementing rules constitutes a violation of a rule under Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, regarding unfair or deceptive acts or practices.[5] The Act authorizes the Commission to investigate and enforce the Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties, as a trade regulation rule under the Federal Trade Commission Act.[6]

The Commission published a Notice of Proposed Rulemaking and Request for Public Comment ("NPRM") in the **Federal Register** on February 4, 2004,[7] and the 60-day comment period closed on April 5, 2004. The Commission received more than 7,000 comments. The commenters included nearly 6,000 individual consumers as well as prescribers, their State and national trade associations, contact lens sellers, State attorneys general, and others. Based on the rulemaking record, including the comments received, the Commission has modified the proposed Rule published in the NPRM and now promulgates a final rule as described in this Statement of Basis and Purpose.

In addition, the Commission enforces the Ophthalmic Practice Rules,[8] which primarily require the release of eyeglass prescriptions to patients at the completion of an eye examination, and prohibit eye care practitioners from placing certain conditions on such release. The Commission today implements two clerical amendments, set forth in section III below, to clarify the relationship between the Ophthalmic Practices Rules and the Contact Lens Rule.

II. The Rule

As noted above, the Commission published the proposed rule and accompanying analysis in the **Federal Register** on February 4, 2004.[9] Unless specifically modified herein, all of the analysis accompanying the proposed rule in the NPRM is adopted and incorporated into this Statement of Basis and Purpose for the final rule.

A. Section 315.1: Scope of Regulations

Section 315.1 of the proposed Rule described the basis for, and the general scope of, the regulations in part 315—the "Contact Lens Rule"—which implements the Fairness to Contact Lens Consumers Act. The Commission received no comments on this provision and adopts it without modification.

B. Section 315.2: Definitions

1. Definition of "Business Hour"

Congress recognized that consumers may be harmed if they face undue delays in receiving their contact lenses from a seller. Congress also acknowledged that consumers may be harmed if a seller provides contact lenses to a consumer based on an expired, inaccurate, or otherwise invalid prescription. Congress balanced these considerations in section 4(d)(3) of the Act by allowing a seller to treat a prescription as "verified" and sell contact lenses to a consumer if a prescriber has not notified the seller "within eight (8) business hours, or a similar time as defined by the Commission," that a prescription is expired, inaccurate, or otherwise invalid.[10]

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[1] 15 U.S.C. 7601–7610 (Pub. L. 108–164).

[2] *Id.* at 7601.

[3] *Id.* at 7601, 7603.

[4] *Id.* at 7607.

[5] *Id.* at 7608.

[6] *Id.*

[7] 69 FR 5440 (Feb. 4, 2004).

[8] 16 CFR part 456.

[9] 69 FR 5440 (Feb. 4, 2004).

[10] 15 U.S.C. 7603(d)(3).

The Act does not define "business hour" or set forth how to calculate "eight business hours." The purpose of the verification period established under the Act, however, is to give prescribers an opportunity to determine whether prescriptions are expired, inaccurate, or otherwise invalid. Because prescribers make this determination during the hours that they are open, Congress apparently intended prescribers to have eight hours during which they are open for business to respond to a verification request.

Accordingly, in the proposed Rule, the Commission defined "business hour" as an hour between 9 a.m. and 5 p.m., during a weekday excluding Federal holidays. The definition further specified that for verification requests received between 9 a.m. and 5 p.m., "eight (8) business hours" would be calculated from the first business hour that occurs after the seller provides the prescription verification request to the prescriber, and conclude after eight business hours have elapsed. For verification requests received by a prescriber during non-business hours, the calculation of eight business hours would begin at 9 a.m. on the next weekday that is not a Federal holiday, and would end at 9 a.m. on the following weekday.

For the reasons discussed below, the Commission retains the definition of "business hour" as an hour between 9 a.m. and 5 p.m., during a non-holiday weekday. However, the Commission has revised the rule to provide sellers with the option of counting a prescriber's regular business hours on Saturdays, so long as the seller has actual knowledge of these hours. In addition, the Commission has revised the calculation of "eight (8) business hours" so that the verification period ends—and a seller may sell contact lenses—as soon as eight business hours have elapsed. Finally, the Commission clarifies that business hours are to be determined based on the time zone of the prescriber.

a. Actual Hours

The Commission's proposed definition of "business hour" generated a substantial number of public comments. A number of comments sought a definition that reflects prescribers' actual business hours. For example, one large Internet-based contact lens seller urged that sellers should have the option of determining the actual business hours of a particular prescriber and using those as an alternative to the Rule's "default" business hours.[11]

A number of prescribers and their trade associations also sought a definition of "business hours" that reflects actual business hours. These commenters, however, explained that the Commission's proposed definition did not take into account days when a prescriber's office is closed and the prescriber cannot respond to a verification request within eight business hours. These commenters sought various exceptions or extensions to the business hour definition to accommodate circumstances such as days the prescriber's office is regularly closed; days the prescriber is performing surgery; and days a prescriber is out of the office for continuing education, illness, vacation, or inclement weather.[12] Many commenters also sought an exception for so-called "satellite offices," described as prescriber offices commonly located in rural areas and open only one or two days per week.[13] Other commenters emphasized generally that actual prescriber business hours vary from those of other retail and Internet businesses, and urged the Commission to craft a rule that "serves the best interests and safety of the consumers, not just those of contact lens sellers."[14]

Few of the voluminous comments received on this issue proposed a means of accommodating the requested exceptions. Some suggested providing a longer verification period generally,[15] while others suggested that the prescriber's office be permitted to inform the seller of the prescriber's return date, or the date on which the office would next be open, at which time the eight business hour verification period would commence.[16] One commenter suggested that, prior to requesting verification, a seller should first have to determine that the prescriber's office is open and that the prescriber will be present in the office during the next eight hours.[17]

Having considered these comments, the Commission declines to adopt an actual hours or other prescriber-specific approach to business hours. Evidence in the record indicates that there are more than 50,000 prescribers in the United

[11] 1–800 CONTACTS (Comment #1140). The Mercatus Center at George Mason University (Regulatory Studies Program) (Comment #1087) made a similar proposal.

[12] *E.g.*, American Optometric Association (Comment #1149) (citing continuing education, vacation and illness); American Academy of Ophthalmology (Comment #1057) (9–5 Monday through Friday does not address realities of ophthalmologic practice; approximately 40% of its members are solo practitioners; Rule should make exceptions for surgery days, continuing education, a weekday when the office is regularly closed, State or religious holidays, solo practitioner illness and/or vacation days, and for local, State, or federally mandated jury duty); New Jersey Academy of Ophthalmology (Comment #1126) (most physicians are closed one day per week and close for vacation several weeks per year; requiring coverage from 9–5 every Monday through Friday is unrealistic and unduly burdensome); Nebraska Optometric Association (Comment #1083) (seeking "reasonable extensions" of eight-hour rule when doctor is absent for continuing education, vacation, or illness); Ohio Optometric Association (Comment # 1151) (same, citing continuing education obligations, illness, vacation, periods of unplanned practice interruptions); New Mexico Optometric Association (Comment # 1081) (continuing education, vacation and illness); C. Lesko, M.D., FACS (Comment #960) (performs surgery two days a week); Kansas Optometric Association (Comment #1153) (citing continuing education (24 hours per year in Kansas), vacation and illness); American Society of Cataract and Refractive Surgery (Comment #1148); E. Lamp, O.D. (Comment #714).

[13] *E.g.*, Kansas Optometric Association (Comment #1153) (citing approximately 60 satellite offices in State); Kentucky Optometric Association (Comment #1101); Colorado Optometric Association (Comment #1067); American Optometric Association (Comment #1149); Nebraska Optometric Association (Comment #1083) (seeking "reasonable extension" of eight-hour rule for verifications sent to satellite offices); Pennsylvania Optometric Association (Comment #959); Ohio Optometric Association (Comment # 1151); New Mexico Optometric Association (Comment # 1081); B.L.Whitesell, O.D. (Comment #1115); S. Wagner, M.D. (Comment #928). A number of these commenters explained that the records for patients of satellite offices are often kept at the satellite office and thus, on days the office is not open, are not readily accessible for verification during an eight-hour window.

[14] A.L. Warner (Comment #706).

[15] *E.g.*, Texas Ophthalmological Association (Comment #1117).

[16] *E.g.*, American Optometric Association (Comment #1149); Ohio Optometric Association (Comment # 1151); American Society of Cataract and Refractive Surgery (Comment #1148) (prescriber could be required to leave information on answering service, voicemail, or answering machine); B.L. Whitesell, O.D. (Comment #1115) (willing to tell sellers what his hours are); K. Driver, O.D. (Comment #273) (same); S. Wagner, M.D. (Comment #928) (Rule should allow prescriber to respond within eight hours to a faxed request to a satellite office, providing a specific statement that the records are in a remote location and will be available for review on a certain date). *See also* Pennsylvania Optometric Association (Comment #959) (stating some of its members have contacted seller and asked them to fax verification request to the main office but seller refused).

[17] Tupelo Eye Clinic/Chappell (Comment #11). Other commenters made similar suggestions. *E.g.*, New Jersey Academy of Ophthalmology (Comment #1126) (suggesting physicians be permitted extra time beyond the eight business hours to comply, or exempting from liability physicians who could not verify a prescription due to office closure); Your Family Eye Doctors, Inc. (Comment #705) (recommending 24 business hours for verification rather than eight, to accommodate satellite offices); G. Lozada (Comment #1063) and Opticians Association of Ohio (Comment #1156) (also suggesting 24 hours); American Academy of Ophthalmology (Comment #1057) (suggesting time period for verification begin at 9:00 a.m. on the next business weekday that the office is open).

States,[18] and that actual business hours vary widely among them.[19] It likely would be difficult and burdensome—perhaps impossible—for some sellers to determine and keep track of the actual hours of 50,000 prescribers.[20] By contrast, a general rule using a uniform definition of business hours for all prescribers provides clarity and relative ease of compliance and enforcement. Moreover, there does not appear to be any practical way to accommodate the myriad circumstances during which the offices of 50,000 individual prescribers may be closed or otherwise not able to respond to a prescription verification request.[21]

In addition, several commenters, including optometric associations and one State board, voiced support for the proposed definition, particularly its limitation to weekdays and non-holidays.[22] One commenter stated that "it would be impractical for the Commission to craft store- or prescriber-specific rules." [23] Similarly, other commenters opposed exceptions or extensions for days a prescriber's office may be closed for vacation, State or local holidays, or other reasons. These commenters argued that making such exceptions would impose undue burdens on small sellers to keep track of such closures, thereby harming their ability to compete with larger sellers. These commenters also argued that it would unreasonably delay delivery of contact lenses to consumers.[24]

b. General Rule

Having determined that a general rule using uniform business hours is preferable to an actual hours standard, the Commission discusses below the remaining comments received on its proposed definition and the revisions the Commission has made to the Rule in response.

1. Monday Through Friday

A number of commenters offered alternative definitions of business hours. A few commenters, including the California Board of Optometry, urged the Commission to consider adopting a verification time period that tracks California State law.[25] Under California's prescription release law, a prescription is verified if the prescriber does not respond by or before the same time on the next business day after the seller requested verification, or by 2 p.m. the next business day, whichever is earlier.[26]

One contact lens seller, Wal-Mart, proposed a "24-hour" rule, somewhat similar to California's, under which the verification period would expire at the same time on the next business day after the prescriber received the verification request.[27]

Another seller, 1–800 CONTACTS, proposed defining "business hours" as 9 a.m. to 6:30 p.m., Monday through Friday, and 9 a.m. to 4 p.m. on Saturday, based on a survey of actual prescriber business hours.[28] The survey itself concluded that a "standardized work week" for optical goods retailers is 9 a.m. to 6:15 p.m. Monday through Thursday, 9 a.m. to 6 p.m. Friday, and 9 a.m. to 4:15 p.m. Saturday.[29]

Finally, a group of 34 State Attorneys General commented that the proposed definition was too narrow because many prescribers are open longer hours and on weekends.[30] The Attorneys General offered three alternatives, with a preference for a definition that would allow the eight-hour verification period to end when the eight business hours elapse, not at the start of the next business hour.[31]

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[18] *See, e.g.*, American Optometric Association (Comment #1137) (representing some 33,000 members). In addition, the American Academy of Ophthalmology has represented to Commission staff that it represents approximately 17,000 members.

[19] *See, e.g.*, comments discussed *supra*; 1–800 CONTACTS (Comment #1140) at attachment 32 (survey of prescribers' actual hours).

[20] *Cf.* AC Lens (Comment # 974) (arguing that Rule should not exclude State or local holidays as business days because doing so would put unreasonable burden on smaller entities in other States that have no practical way to track down such holidays in all 50 States).

[21] The suggestion that a prescriber's staff be permitted to contact the seller and inform them of the prescriber's absence—and thereby obtain an extension to the eight hour verification period—is simply not practical. Such a system would work only if prescribers' offices were staffed on the relevant day, and the public comments made clear that in many cases the office is simply closed—*e.g.*, because it is a satellite office, the office is regularly closed on a certain weekday, or due to inclement weather.

[22] *E.g.*, Florida Board of Optometry (Comment #1100); National Association of Optometrists and Opticians (Comment #1146) (supporting limitation to weekdays and non-holidays); American Optometric Association (Comment #1149) (supporting proposed definition because it "recognizes the fact that while some offices are open on some Saturdays, most are not open every Saturday, and many are not open any Saturday").

[23] National Association of Optometrists and Opticians (Comment #1146).

[24] AC Lens (Comment # 974); R.Weigner (Comment #1118) (information about State and local holidays is not available to national mail order and internet firms; even if it were available, it would be cost-prohibitive to implement and would stifle competition).

[25] *E.g.*, California Board of Optometry (Comment #21); Hon. Jim Matheson, U.S. House of Rep. (Comment #1237); L. Correa, California Assembly Rep. (Comment #1142); Citizens for a Sound Economy (Comment #1108) (noting the California law "has been in place for over a year, and has worked well"); William F. Shughart, II, Ph.D. (Comment #975) (on behalf of 1–800–CONTACTS).

[26] California's statute took effect in January 2003, just over one year before the Fairness to Contact Lens Consumers Act took effect.

[27] Wal-Mart Optical Division (Comment #1070).

[28] 1–800 CONTACTS (Comment #1140). The survey, submitted as part of the record in this proceeding, was prepared by Synovate, a market research firm, and consisted of 300 telephone interviews for each of four retail channels—independent optometrists, ophthalmologists, optical retail chains (*e.g.*, LensCrafters, Pearle Vision), and mass merchandisers (*e.g.*, Wal-Mart, Target, Costco)—asking about store business hours. *See* Comment #1140, attachment 32. From the interview results, average opening and closing times were determined for each day of the week for each retail channel as follows:

Mass merchandisers: approximately 9:15 a.m. to 8:35 p.m. Monday through Friday, Saturday 8:45 a.m. to 7:25 p.m., Sunday 11:25 a.m. to 5:05 p.m.

Retail optical chains: approximately 9:45 a.m. to 7:25 p.m. Monday through Thursday, Friday 9:40 a.m. to 7:15 p.m., Saturday 9:40 a.m. to 6:05 p.m., Sunday 11:35 a.m. to 5:15 p.m. (49% are closed Sunday).

Independent optometrists: approximately 9 a.m. to 5:50 p.m. Monday, Tuesday, Thursday, Wednesday 9 a.m. to 5:35 p.m., Friday 8:50 a.m. to 5:20 p.m., Saturday 9 a.m. to 2:40 p.m. (39% are closed Saturday, 91% are closed Sunday).

Ophthalmologists: approximately 8:35 a.m. to 5:10 p.m. Monday through Thursday, Friday 8:30 a.m. to 4:35 p.m., Saturday 8:40 a.m. to 1:25 p.m. (75% are closed Saturday, 98% are closed Sunday).

[For purposes of simplicity, the Commission has rounded off some of the averages set forth in the survey results to the closest 5-minute increment.] Then, final average daily opening and closing times—combining all four channels—were determined by weighting each channel's average to match the actual incidence of lenses dispensed among the four channels.

[29] *See* Comment #1140, attachment 32.

[30] State Attorneys General (Comment #1114). This comment represented the views of the Attorneys General representing Alabama, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New York, North Dakota, Commonwealth of the Northern Mariana Islands, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The Attorney General of Idaho filed a separate comment (Comment #1176) joining the other States.

The Independent Women's Forum (Comment #1236) raised many of the same arguments as the State Attorneys General, and argued that the proposed definition of "business hours" would "seriously undermine[] women's autonomy by reversing the conveniences that have been created, in part, to support working women and mothers." *See also* Hon. J. Sensenbrenner (Comment # 1246) (arguing proposed definition "bears no relation to the way either consumers or retailers behave"); Progressive Policy Institute (Comment #1141) (recommending broader definition of business hour because eye care providers can sell contact lenses to consumers any time they are open but would only have to verify prescriptions between 9–5 on weekdays); Americans for Prosperity (Comment #1145) (proposed definition is not grounded in actual practices of the eye care industry).

[31] The other alternatives were: (1) Using an "actual hours" standard under which sellers would be obligated to know the actual business hours of each prescriber, and would be permitted to presume verification (and ship an order) after the prescriber had received the request and been open for eight

The Commission addresses the commenters' specific proposals in detail below. However, having considered the comments, the Commission has decided to retain the proposed definition of "business hour" as an hour between 9 a.m. to 5 p.m. on a non-holiday weekday. Evidence in the record clearly indicates that the 50,000 prescribers in the United States vary as to their actual business hours—in some cases widely. However, the Act clearly contemplates that prescribers should have a reasonable opportunity when they are open to respond to verification requests. The evidence indicates that most prescribers are open Monday through Friday, and that most are open for at least eight hours per day. Some appear to open earlier than 9 a.m., and some appear to be open after 5 p.m., but a 9 a.m. to 5 p.m. rule generally should provide these prescribers eight hours during which they are actually open to respond to prescription verification requests.[32] Moreover, such a general rule should be easy for sellers and prescribers to apply, because eight business hours would usually end at the exact same time on the following business day. For example, if a verification request is received at 2 p.m. on a Tuesday, the prescriber would have until 2 p.m. on Wednesday to respond.

2. Saturday

Several commenters urged the Commission to include Saturday business hours in the Rule's definition of "business hours."[33] Sellers argued that many prescribers are, in fact, open on Saturdays, and that current retail operations in the United States typically include Saturday business hours.[34] The California Board of Optometry noted that California's prescription release law recognizes Saturday as a business day—"to accommodate the operational needs of contact lens sellers"—and argued this model has proven successful.[35]

Other commenters, however, pointed out that many prescribers are *not* open on Saturdays.[36] The evidence in the record supports this argument, indicating that a significant number of prescribers are not regularly open on Saturdays. Survey data indicates that 39% of optometrists and 75% of ophthalmologists are closed on Saturday,[37] and that these groups issue a substantial majority of contact lens prescriptions. This conclusion is generally consistent with the estimates that some prescribers made in their comments.[38]

Based on the comments and evidence, the Commission has revised the Rule to give sellers the *option* of determining whether an individual prescriber in fact has regular Saturday business hours, and, if so, to include those hours in the eight-hour verification period prescribed in section 315.5(c)(3). A rule requiring that Saturday hours be counted as business hours would deny many prescribers who are not open a reasonable opportunity to respond to prescription verification requests. At the same time, not counting Saturdays at all would deny consumers the opportunity to have their prescriptions verified by those prescribers who *are* open, and to receive their lenses more quickly.

Because it may be burdensome for some sellers to obtain actual knowledge of prescribers' Saturday business hours,[39] the Commission concludes that the Rule should provide sellers the option of counting those hours, rather than requiring them to do so. This approach will enable a consumer whose prescriber is open on Saturday, and who wants to receive lenses as quickly as possible, to find a seller that will determine the prescriber's Saturday hours. In addition, this approach should be easy for prescribers to implement, because only those that are open will have to respond to verification requests on Saturdays.

To facilitate the use of Saturday business hours, the final Rule incorporates two related revisions to the proposed Rule. First, a seller that exercises its option to count a prescriber's regular Saturday business hours must state those hours clearly on the verification request.[40] This requirement will alert the prescriber that the seller is in fact counting Saturday hours—so that the prescriber can respond appropriately—and also provide an opportunity for the prescriber to notify the seller if the seller uses the wrong hours. Second, a seller exercising its option to count a prescriber's regular Saturday business hours must maintain a record of those hours and the basis for the seller's actual knowledge of what those hours are—*i.e.*, how the seller determined the hours.[41] These related provisions are intended to promote accuracy by sellers and facilitate enforcement.

3. Sunday

The proposed definition of "business hour" excluded Sundays. The Commission did not receive any comments advocating the inclusion of Sundays in business hours. The evidence in the record also suggests that most prescribers are closed that day.[42] Accordingly, the Commission retains the exclusion of Sundays from the definition of business hour.

4. Federal Holidays

The Commission's proposed definition of "business hour" did not count Federal holidays. One commenter suggested that the definition should include all Federal holidays except the "major" ones—*i.e.*, Christmas, New Year's Day, and Thanksgiving—because "most businesses" are open on the other Federal holidays.[43] The record in this

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business hours; and (2) allowing sellers the option of using the 9 a.m. to 5 p.m. non-holiday weekday definition or the actual prescriber business hours. *See* Comments ##1114, 1176.

[32] The Commission notes that this rule has a similar practical effect as the California model and the "24-hour rule" promoted by a number of commenters. In many cases, the verification period will expire at the same time, on the next business day, after the prescriber receives the request, regardless of which model is utilized. For example, a request received at 10 a.m. on a Tuesday would be deemed verified at 10 a.m. on Wednesday under the Commission's definition, the California model, or the 24-hour rule. In some instances, the Commission's Rule will result in quicker verification than under other proposed models; for requests received prior to 9 a.m. on a Monday through Friday, the prescription will be verified at 5 p.m. that same day rather than at 9 a.m. the following business day under the California model or the 24-hour rule.

[33] *E.g.*, California Board of Optometry (Comment #21); AC Lens (Comment # 974); Costco Wholesale Corporation (Comment #1061); 1–800 CONTACTS (Comment #1140); Wal-Mart Optical Division (Comment #1070); Citizens for a Sound Economy (Comment #1108).

[34] *E.g.*, 1–800 CONTACTS (Comment #1140); Costco Wholesale Corporation (Comment #1061); *See also* Wal-Mart (Comment #1070) (arguing that many working people can only shop in the evening, and that "contact lens prescribers should be presumed to work normal business hours on days when most other people work, whether or not they actually do so").

[35] California Board of Optometry (Comment #21). By contrast, however, the California Optometric Association argued against including Saturday business hours. *See* Comment #1158.

[36] *E.g.*, National Association of Optometrists and Opticians (Comment #1146); American Optometric Association (Comment #1149).

[37] *See* 1–800 CONTACTS (Comment #1140) at attachment 32.

[38] National Association of Optometrists and Opticians (Comment #1146) (estimating more than half practitioners are not open on Saturdays; supporting limitation to non-holiday weekdays); American Optometric Association (Comment #1149) (supporting proposed definition of business hours because it "recognizes the fact that while some offices are open on some Saturdays, most are not open every Saturday, and many are not open any Saturday").

[39] *Cf.* AC Lens (Comment # 974) (arguing that Rule should not exclude State or local holidays as business days because doing so would put unreasonable burden on smaller entities in other States that have no practical way to track down such holidays in all 50 States).

[40] *See* discussion of section 315.5(b) *infra*.

[41] *See* discussion of section 315.5(g) *infra*.

[42] *See, e.g.*, 1–800 CONTACTS (Comment #1140) at attachment 32 (indicating 49% of retail optical chains, 91% of independent optometrists, and 98% of ophthalmologists are closed on Sunday).

[43] Wal-Mart Optical Division (Comment #1070). *See also* AC Lens (Comment #974) (arguing that

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proceeding, however, does not provide evidence indicating that most prescribers are open on the other Federal holidays. Because the Act is intended to give prescribers eight business hours during which they are open to respond to a verification request, the Commission declines to count "non-major" Federal holidays in the definition of business hour and, accordingly, retains the proposed definition of "business hour" as excluding Federal holidays.

c. Calculation of Eight Business Hours

The Commission received a number of comments on its proposed method of calculating eight business hours, some of which are discussed above. Under the proposed Rule, the eight-hour verification period would have expired—and a seller could ship a customer's order—at the start of the next business hour *after* eight such hours had elapsed. Overall, these comments objected to the "eight-hours-plus-one-day" verification period that would result in some circumstances.[44] For example, the State Attorneys General argued that the eight hours should not exceed one business day; otherwise, it would undermine the Act's intent to increase consumer choice and convenience.[45] They pointed out that the Act deems a prescription verified if the prescriber does not respond "within" eight hours. The proposed Rule's requirement that seller wait longer than those eight hours—and often an extra day—before shipping is not justified and likely will have anticompetitive effects.[46]

The Commission recognizes that its proposed method of calculation would have imposed significant delays on sellers and consumers under some limited circumstances. For example, a verification request received after 5 p.m. on a Tuesday would not be deemed verified until 9 a.m. on Thursday. In addition, a request received after 5 p.m. on a Friday would not be deemed verified until 9 a.m. the following Tuesday—or at 9 a.m. the following Wednesday if Monday were a Federal holiday. Although the latter scenario would not occur frequently, such delay would have been significant.

Accordingly, the Commission has clarified in the final Rule that the eight-hour verification period ends—and a seller may sell contact lenses—*when* eight business hours have elapsed. Thus, for example, if a prescriber receives a proper verification request before 9 a.m., the seller may ship a customer's order at 5:01 p.m. if the prescriber has not responded that the prescription is expired, inaccurate, or otherwise invalid. Under this approach, prescribers will have a reasonable opportunity to respond to verification requests, and consumers will obtain the benefits from expeditious verification.

In addition, the Commission has clarified that the time period is calculated from the time the *prescriber receives* a proper verification request from a seller, rather than when the seller provides the request to the prescriber as stated in the proposed Rule.[47] That is, if a prescriber receives a verification request during business hours (as defined in the final Rule), the eight-hour verification period begins immediately; if a prescriber receives a request during non-business hours, the eight hours begins at the start of the next business hour. This clarification is necessary to harmonize the definition of "business hour" with section 4(d)(3) of the Act, which provides that a prescription is verified if the prescriber fails to communicate "within eight (8) business hours after receiving from the seller" the information required to make a verification request.[48]

d. Time Zone

A number of prescribers, as well as national and state optometric associations, commented that the Rule should specify that business hours are calculated based on the prescriber's time zone, not the seller's.[49] The Commission agrees that the Rule should make clear which time zone applies. Given that Congress intended to give prescribers eight business hours during which they are open to verify prescriptions,[50] the Commission concludes that "business hour" should be determined based on the prescriber's time zone, and has revised the Rule accordingly.

2. Definition of "Commission'

The proposed Rule defined "Commission" to mean the Federal Trade Commission.[51] The Commission received no comments on this definition and adopts it, without modification, in the final Rule.

3. Definition of "Contact Lens"

The Act does not define the term "contact lens." In the NPRM, the Commission asked whether the Rule should define the term and, if so, whether the definition should include non-corrective (*e.g.*, decorative) lenses.[52]

The Commission received a number of comments on this issue. Most commenters recommended defining the term, and most urged the Commission to specifically include "cosmetic," "decorative," or "non-corrective" lenses, or otherwise explicitly state that the Rule applies to *all* contact lenses.[53] The primary reason stated was that both corrective and non-corrective lenses pose health risks to consumers and therefore a prescription should be required to obtain them. One commenter also stated that Congress did not draw any distinction in the Act between different types of lenses, and therefore the definition in the Rule should not.[54]

Two commenters noted, however, that some cosmetic lenses currently are available without a prescription.[55] To

Federal holidays should only be the major ones when majority of retail businesses are closed).

[44] *E.g.*, Hon. J. Sensenbrenner (Comment # 1246) (objecting to the eight-hours-plus-one-day calculation of eight business hours).

[45] State Attorneys General (Comments ##1114, 1176).

[46] *See also* The Independent Women's Forum (Comment #1236) (objecting to "eight-hours-plus-one-day" calculation); Hon. J. Sensenbrenner (Comment #1246) (same). In addition, hundreds of consumers stated that an eight-hour-plus-one-day verification period was too long. *See, e.g.*, Comments #142, 143, 431, 463, 555, 571, 602–05, 616, 617, 620, 629, 631–36, 638, 640, 641, 644–47, 649, 670, 674, 680, 682, 685, 690, 691, 697, 709, 710, 726, 727, 731, 732, 746–51, 753, 754, 755, 760, 763, 766, 777, 779, 782, 787–89, 799, 803.

[47] The proposed Rule had stated that eight business hours would begin "at the time that the seller provides the prescription verification request to the prescriber." 69 FR at 5441.

[48] 15 U.S.C. 7603(d).

[49] *E.g.*, M. Spittler (Comment #158); Wheaton Eye Clinic (Comment #416); C.W. Kissling, O.D. (Comment #452); E. Attaya (Comment #952); Pennsylvania Optometric Association (Comment #959); Olathe Family Vision (Comment #971); Kansas Optometric Association (Comment #1153); Colorado Optometric Association (Comment #1067); New Mexico Optometric Association (Comment #1081); Kentucky Optometric Association (Comment #1101); National Association of Optometrists and Opticians (Comment #1146); American Optometric Association (Comment #1149); Ohio Optometric Association (Comment #1151); California Optometric Association (Comment #1158). Two other commenters more generally asked the Commission to specify which time zone applies. K. Poindexter (Comment #260); E. Lamp, O.D. (Comment #714).

[50] 15 U.S.C. 7603(d).

[51] *See* 69 FR at 5448.

[52] 69 FR at 5447.

[53] K. Green (Comment #4); C. Smith (Comment #6); M. Davis (Comment #8); M. Walker (Comment #10); W. Lindahl (Comment #16); W. West (Comment #126); Poindexter (Comment #260); Illinois Optometric Association (Comment #1005); Kansas Board of Examiners in Optometry (Comment #1007); American Optometric Association (Comment #1149); Kansas Optometric Association (Comment #1153); New Mexico Optometry Association (Comment #1081); Ohio Optometric Association (Comment # 1151); California Optometric Association (Comment #1158).

[54] American Optometric Association (Comment #1149).

[55] American Society for Cataract and Refractive Surgery (Comment #1148); Mercatus Center at

avoid ambiguity about the Rule's applicability to such lenses, one of these commenters recommended that the Commission define "contact lens" as "any contact lens for which state or federal law requires a prescription." [56]

The Act focuses on the release and verification of contact lens prescriptions. The Act also prohibits advertising that contact lenses "may be obtained without a prescription." [57] The Commission thus concludes that Congress intended the Act and implementing Rule to cover only contact lenses for which a prescription is required. Accordingly, the Commission has decided to add the following definition to the Rule: "For purposes of the Rule, 'contact lens' means any contact lens for which state or federal law requires a prescription."

4. Definition of "Contact Lens Fitting"

Section 11(1) of the Act defines a "contact lens fitting" as "the process that begins after an initial eye examination for contact lenses and ends when a successful fit has been achieved or, in the case of a renewal prescription, ends when the prescriber determines that no change in the existing prescription is required." [58] The Act states that the fitting process "may include—(a) an examination to determine lens specifications; (b) except in the case of a renewal of a contact lens prescription, an initial evaluation of the fit of the contact lens on the eye; and (c) medically necessary follow-up examinations." [59] The definition of "contact lens fitting" in the proposed Rule was taken verbatim from the Act.[60] For the reasons set forth below, the Commission adopts this definition without modification in the final Rule.

A number of commenters suggested that the term "medically necessary follow-up examinations" be defined specifically in the final Rule.[61] Based on the record, the Commission lacks the expertise to define this term; moreover, it seems unlikely that even medical professionals could list in advance all circumstances in which there are valid medical reasons for a follow-up examination. Accordingly, the Commission declines to define that term in the final Rule at this time. The Commission, however, expects prescribers to exercise sound professional judgment when determining if follow-up exams are "medically necessary" based on appropriate and objective standards of medical care.

5. Definition of "Contact Lens Prescription"

Section 11(3) of the Act defines a "contact lens prescription" as "a prescription, issued in accordance with State and Federal law, that contains sufficient information for the complete and accurate filling of a prescription for contact lenses, including the following: (a) The name of the patient; (b) the date of examination; (c) the issue date and expiration date of prescription; (d) the name, postal address, telephone number, and facsimile telephone number of prescriber; (e) the power, material or manufacturer or both of the prescribed contact lens; (f) the base curve or appropriate designation of the prescribed contact lens; (g) the diameter, when appropriate, of the prescribed contact lens; and (h) in the case of a private label contact lens, the name of the manufacturer, trade name of the private label brand, and, if applicable, trade name of equivalent brand name." [62] The definition of "contact lens prescription" in the proposed Rule was taken verbatim from Section 11(3) of the Act.[63] For the reasons set forth below, the Commission adopts the proposed definition without modification in the final Rule.

a. Number of Lenses Prescribed

Several prescriber trade associations,[64] one state optometry board,[65] and numerous individual prescribers [66] recommended that the Commission revise the definition to require the inclusion on the prescription of the number of lenses or refills allowed. Many of these commenters expressed concerned that the absence of such information would allow patients to circumvent the prescription expiration date by purchasing additional quantities of lenses before the prescription expires.[67] One of these commenters pointed out that the Act contemplates that quantity limits are appropriate because it mandates that sellers include the quantity ordered in their verification requests.[68]

Sellers, in contrast, noted that the Act does not provide for prescribers to limit the number of boxes or units dispensed so long as the prescription is current.[69] The sellers further argued that such restrictions could be used to impose expiration dates shorter than those contemplated under the Act. Moreover, an academic ophthalmologist commented that allowing prescribers to limit the number of refills might encourage patients to overwear contact lenses in order to "stretch" their prescriptions to the end of the expiration period.[70] The same commenter noted that, if quantity limits are imposed, patients who tear or lose their lenses or who have to replace lenses more frequently may have prescriptions that run out before they expire. In addition, one seller contended that patients may choose to replace lenses more frequently than recommended by their prescriber, and that such potentially healthier choices could be precluded if prescriptions limit

George Mason University (Regulatory Studies Program) (Comment #1087).

[56] Mercatus Center at George Mason University (Regulatory Studies Program) (Comment #1087).

[57] 15 U.S.C. 7605.

[58] *Id.* at 7610(1).

[59] *Id.*

[60] *See* 69 FR at 5448.

[61] Consumers Union (Comment #1139) (recommending that follow-up examinations must be medically indicated and occur within 30 days of the original fitting exam); R. Weigner (Comment #1118) (follow-up examination should be "more strictly defined so it cannot extend indefinitely"); American Society for Cataract and Refractive Surgery (Comment #1148) (opposing a Commission-determined standard, but recommending the Rule expressly state "as reasonably determined by the prescriber"); Illinois Optometric Association (Comment #1005) (seeking a broader definition such as "medically necessary follow-up examinations and/or sufficient follow up and lens parameter adjustment to minimize the risks of contact lens complications as much as clinically possible"); Dr. K. Poindexter (Comment #260).

One trade association also requested a clarification that the initial evaluation includes giving a patient a pair of lenses to wear on a trial basis, and that the fitting is not complete until the prescriber settles on the final prescription. American Society for Cataract and Refractive Surgery (Comment #1148). The Commission believes that the proposed definition of "contact lens fitting" clearly and sufficiently indicates that a contact lens fitting may include an initial evaluation of the fit of the contact lens on the eye (except in the case of renewals) as well as any medically necessary follow-up exams.

[62] 15 U.S.C. 7610(3).

[63] *See* 69 FR at 5488.

[64] American Optometric Association (Comment #1149); Illinois Optometric Association (Comment #1005); Kentucky Optometric Association (Comment #1101).

[65] Kansas Board of Examiners in Optometry (Comment #1007).

[66] *E.g.*, E. Attaya (Comment #952); G. Barker (Comment #125); S. Carlson, O.D. (Comment #906); M. R. Carter (Comment #3); M. Dean (Comment #457); D. Deeds (Comment #13); K. Green (Comment #4); W. Lindahl (Comment #16); M. Palermo, O.D. (Comment #22); M. Walker (Comment #165); Your Family Eye Doctors, Inc. (Comment #705).

[67] *E.g.*, Kansas Board of Examiners in Optometry (Comment #1007); W. Lindahl (Comment #16).

[68] American Optometric Association (Comment #1149).

[69] AC Lens (Comment #974); William F. Shughart, II, Ph.D., on behalf of 1–800-CONTACTS (Comment #975).

[70] P.S. D'Arienzo, M.D. (Comment #1056).

the number of lenses that can be dispensed.[71]

After reviewing the comments, the Commission has decided not to modify the definition of contact lens prescription to require the inclusion of the quantity of lenses or refills allowed. The Act does not require the inclusion of quantity information on the prescription. In addition, if the quantity of lenses is included on the prescription, then prescribers may use quantity limits to impose prescription expiration dates that are effectively shorter than the one-year period imposed under the Act. Moreover, it is not necessary to include the quantity of lenses on the prescription to limit patients' ability to circumvent the expiration date. Section 315.5(b) requires verification requests to contain the quantity of lenses ordered, and as discussed below in section 315.5(d), the quantity ordered may be a legitimate basis for a prescriber to treat a request for verification of a prescription as "inaccurate." The verification process itself thus generally allows prescribers to prevent patients from ordering excessive contact lenses.

The Commission recognizes that some State laws or regulations may require prescribers to include such information on the prescription. Prescribers in States without such requirements may also choose to include such information on the prescription.

The Commission, however, emphasizes that prescribers may not use quantity limits to frustrate the prescription expiration requirements imposed by section 315.6 of the final Rule. The quantity of lenses or refills specified in the prescription must be sufficient to last through the prescription's expiration date, which typically will be one year after the issue date. If a lesser quantity of lenses or refills is specified in the prescription, the prescriber must have a legitimate medical reason for doing so, and the requirements imposed by section 315.6(b) of the final Rule on writing a prescription for less than one year must be met.

b. Private Label Lenses

A few sellers commented on the Rule provision regarding private label lenses.[72] This provision requires prescriptions for private label contact lenses to identify "the name of the manufacturer, trade name of the private label brand, and, if applicable, trade name of equivalent brand name."[73] Two sellers recommended that the Rule be revised to require manufacturers of private label lenses to provide information to prescribers regarding all equivalent brands, so that this information can be included on the prescription.[74] One of the sellers stated that prescribers and sellers may not know which private label lenses have equivalent brands, so there is currently no mechanism by which sellers and prescribers can comply with subsection (8) of the proposed definition.[75] Nothing in the Act or its legislative history, however, indicates that Congress intended to require contact lens manufacturers to inform prescribers of brand names of equivalent lenses. Consequently, the Commission has concluded that imposing such disclosure requirements on manufacturers would exceed the mandate of the Act.

Another seller suggested that the definition be modified to require those who prescribe private label contact lenses to identify on the prescription the "trade name of a brand name sold to alternative sellers."[76] Section 11(3)(H) of the Act requires that prescriptions for private label contact lenses include the name of the manufacturer, the private label brand name, and, if applicable, the "trade name of an equivalent brand name."[77–78] Although the Act thus expressly requires that "equivalent brand name" contact lenses be identified in prescriptions for private label lenses, it does not require that such "equivalent brand name" contact lenses be sold to alternative sellers. The Commission has therefore concluded that requiring prescribers to identify the "trade name of a brand name sold to alternative sellers" would go beyond the requirements of the Act.[79]

c. Other Suggested Additions

A few prescribers recommended that a contact lens wearing schedule be required on the prescription.[80] A contact lens wearing schedule outlines how often the contact lenses should be removed and/or replaced. After reviewing these comments, the Commission has determined that the record does not contain sufficient evidence to justify the imposition of such a requirement in the final Rule. The Commission notes, however, that the Rule does not prohibit a prescriber from including such information on the prescription.

One commenter suggested that the Commission modify the proposed definition to require prescribers to include an e-mail address on prescriptions for verification purposes, presumably to facilitate communications between sellers and prescribers.[81] Other commenters recommended that an email address be allowed, but not required, on a contact lens prescription because some prescribers may not use e-mail.[82] One such commenter pointed out that e-mail addresses are likely to change frequently, particularly in rural areas.[83] After reviewing these comments, the Commission has decided not to revise the Rule to require the inclusion of an e-mail address, because the record contains no evidence regarding the extent to which prescribers use e-mail to communicate. Although not required, a prescriber may choose to include his or her e-mail address on a contact lens prescription, to facilitate efficient communication between prescribers and patients as well as between prescribers and sellers.

One prescribers' trade association recommended that the Rule expressly allow contact lens prescriptions to include language underscoring that there should be no substitutions.[84] The

[71] AC Lens (Comment #974).

[72] Costco Wholesale Corporation (Comment #1061); AC Lens (Comment #974); 1–800 CONTACTS (Comment #1140).

[73] 69 FR at 5488.

[74] Costco Wholesale Corporation (Comment #1061); AC Lens (Comment #974).

[75] Costco Wholesale Corporation (Comment #1061).

[76] 1–800 CONTACTS (Comment #1140). This commenter was also concerned about "doctor exclusive lenses," which it described as contact lenses sold by manufacturers only to eye care providers and for which there are no available substitutes sold to alternative sellers. The commenter suggested that the Rule require prescribers who prescribe such "doctor exclusive lenses" to specify on the prescription a brand name for lenses that are similar, but not identical, to the prescribed lenses, and are sold to alternative sellers. The Act requires disclosure only when lenses identical to the prescribed lenses are sold under different private label brand names. The imposition of a disclosure requirement for other lenses is beyond the mandate of the Act.

[77] [78] 15 U.S.C. 7610(3)(H).

[79] In addition, one prescriber trade association recommended that subsection (8) of the definition be revised to state "trade name of identical brand name" rather than "trade name of equivalent brand name" to emphasize that prescription alteration is not allowed. Illinois Optometric Association (Comment #1005). Because the phrase "trade name of equivalent brand name" was taken directly from the Act, and there is no evidence in the record indicating that the phrase is inappropriate, the Commission has decided not to make the requested change.

[80] *E.g.*, M. Walker (Comment #165); R. Carter (Comment #3).

[81] R. Weigner (Comment #1118).

[82] American Society for Cataract and Refractive Surgery (Comment #1148); K. Poindexter (Comment #260); Illinois Optometric Association (Comment #1005).

[83] Illinois Optometric Association (Comment #1005).

[84] American Optometric Association (Comment #1149). A prescriber expressed a similar concern that contact lens sellers "notoriously switch patients into what they see as equal or identical

Act, however, permits substitution of identical contact lenses for private label lenses.[85] Consequently, the Commission has concluded that this recommendation would be inconsistent with the Act.

6. Definition of "Direct Communication"

The proposed Rule defined "direct communication" to mean a "completed communication by telephone, facsimile, or electronic mail."[86] In its NPRM, the Commission explained that, under this definition, direct communication by telephone would require reaching and speaking with the intended recipient, or leaving a voice message on the telephone answering machine of the intended recipient; and direct communication by facsimile or electronic mail would require that the intended recipient actually receive the facsimile or electronic mail message.[87] For the reasons set forth below, the Commission adopts this definition without modification in the final Rule.

a. Automated Telephone Systems

The Commission received a substantial number of comments objecting to sellers' use of automated telephone systems to convey verification requests to prescribers. Most of these commenters were individual prescribers or prescriber trade associations, a number of whom argued that automated requests do not constitute direct communication and should be expressly prohibited under the Rule.[88] Some commenters bluntly stated that the automated systems currently in use simply "don't work."[89] Other commenters explained that so-called "binary" automated systems—which ask prescribers to press 1 to verify or press 2 if not willing to verify—are inadequate. Binary automated systems do not provide prescribers an option to correct any inaccuracy; require an immediate response and thus do not allow the prescriber eight business hours to verify; and do not provide the option of speaking with the seller.[90]

Other commenters stated that automated systems often malfunction[91] or begin imparting information as soon as the prescriber's telephone answering system picks up (*e.g.*, for after-hours calls), which frequently results in all or part of the message being cut off or not recorded at all.[92] Two prescribers objected that automated verification systems are "cumbersome" and "time-consuming" for staff who must respond to the verification request in real time while patients are in their office waiting for service.[93]

The Commission recognizes that automated telephone systems may create communication problems as described in the comments received. Nevertheless, we decline to revise the definition of "direct communication" to prohibit the use of automated telephone verification requests. The Act expressly authorizes sellers to send verification requests by telephone,[94] which is commonly understood to include automated telephone systems. It would thus seem to be contrary to Congressional intent to prohibit the use of this technology.

Nevertheless, the Commission emphasizes that calls from automated telephone systems must fully comply with all applicable Rule requirements. For example, any automated verification request must (1) provide complete verification request information as required under section 315.5(b), and this information must be either received by a person on the telephone or otherwise received in full (*e.g.*, all of the requisite information left on a telephone answering machine), and (2) allow eight business hours for the prescriber to respond. If these and other applicable requirements are not met, the automated verification request is not valid.

In addition, the Commission will continue to monitor whether full, valid requests for verification of a prescription are being made through the use of automated telephone systems. If evidence demonstrates that sellers are not making valid verification requests but are providing consumers with contact lenses despite deficient requests, the Commission may revisit this issue.

b. Technologies Used for "Direct Communication"

Other commenters argued that the Commission should alter the scope of technologies that may be used to achieve direct communication between sellers and prescribers. Some commenters urged the Commission to define "direct communication" more broadly than originally proposed. For example, one seller suggested the term include the existing technologies currently specified—facsimile, telephone, and e-mail—plus any "substantially equivalent communication technology," so as to specifically embrace future technologies.[95] Other commenters sought a narrower definition that would permit verification only through a person-to-person telephone call;[96] one commenter recommended that the Rule permit only fax and e-mail communication, and not telephone.[97]

The Act plainly states that "direct communication" includes communication by telephone, facsimile, or electronic mail."[98] Accordingly, the

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contact lens [prescriptions]" and added that "this practice should be stopped." S. Wexler, O.D. (Comment #375).

[85] Section 4(e) of the Act, 15 U.S.C. 7603(f).

[86] 69 FR at 5448.

[87] *See id.* at 5441.

[88] *E.g.*, American Optometric Association (Comment #1149); Nebraska Optometric Association (Comment #1083); Arizona Optometric Association (Comment #1072); Arizona Medical Association (Comment #1130); Ohio Optometric Association (Comment # 1151); Kansas Optometric Association (Comment #1153); Kentucky Optometric Association (Comment #1101); K. Driver, O.D. (Comment #273); Wheaton Eye Clinic (Comment #416); S. Bryant, O.D. (Comment #1127); J. B. Rogers, O.D. (Comment #1119); B. Oppenheim (Comment #1).

[89] *E.g.*, Olathe Family Vision (Comment #971); Your Family Eye Doctors, Inc. (Comment #705); Drs. Odom and Coburn (Comment #958); *see also* A. Lee (Comment #1096) ("automatic calling by [a] robot is worthless"); R. Garfield (Comment #19) (citing numerous problems with automated phone verification); M. Przybylowski (Comment #9) (same); S. Carpenter (Comment #182).

[90] *E.g.*, Texas Ophthalmological Association (Comment #1117); North Carolina State Optometric Society (Comment #1074); Oklahoma Association of Optometric Physicians (Comment #1125); American Academy of Ophthalmology (Comment #1057); Illinois Optometric Association (Comment #1005).

[91] *E.g.*, Ohio Optometric Association (Comment #1151); Oklahoma Association of Optometric Physicians (Comment #1125).

[92] *E.g.*, National Association of Optometrists and Opticians (Comment #1146); Colorado Optometric Association (Comment #1067) (noting some recordings shut off automatically before the message is complete); Kansas Optometric Association (Comment #1153) (noting that some optometrists' offices do not record incoming messages at all).

[93] J. Sawyer (Comment #814); D. Ball (Comment #849).

[94] *See* 15 U.S.C. 7603(a)(2) (permitting prescription verification by "direct communication"), 7603(g) (defining "direct communication" to include communication by telephone).

[95] 1–800 CONTACTS (Comment #1140). *See also* Mercatus Center at George Mason University (Regulatory Studies Program) (Comment #1087) (suggesting more open-ended definition—such as adding "or other electronic means"—rather than enumerating all permissible communication options).

[96] *E.g.*, K. Poindexter (Comment #260) (arguing that communication by fax and e-mail are not workable because seller has no way to know when prescriber receives it and thus when the communication was "completed"); M. Walker (Comment #10) (same); M. Davis (Comment #8) (same); Catherine Smith (Comment #6) (same); K. Green (Comment #4) (citing problems with fax—*e.g.*, paper jam, no paper, no toner, memory failure—and e-mail—*e.g.* blocked by anti-spam software or by ISP); J. Maurillo (Comment #172) (suggesting that person-to-person call be followed by a faxed confirmation); H. Cerri, M.D. (Comment #1129) (verification should occur by recorded telephone call).

[97] C.F. Ford, O.D. (Comment #969).

[98] 15 U.S.C. 7603(g).

Commission cannot eliminate by rule any of the three specified methods. As for expanding the definition to specifically reference "future" or "substantially equivalent" technology, Congress's use of the term "includes" contemplates that additional methods of communication may develop that sellers and prescribers could use in the verification process. There is no evidence in the record, however, of specific additional technologies that sellers and prescribers currently use or are likely to use in the verification process. Moreover, the Commission cannot determine how the verification process would work, or how recordkeeping requirements would apply, with respect to as-yet-unknown technologies. If such other technologies develop, the Commission may consider revising the Rule to permit those technologies to be used in direct communication.

c. "Completed" Communication by Telephone, Facsimile or Electronic Mail

Commenters also asked the Commission to define or clarify when a "completed" communication by telephone, facsimile or electronic mail has occurred. One Internet-based contact lens seller proposed an expansive definition that would include either (a) affirmative evidence that a communication was completed, (b) evidence that a fax or e-mail or substantially equivalent communication technology had been attempted twice, or (c) evidence that live telephone verification had been attempted.[99] Another seller suggested that electronic confirmation of a successful facsimile transmission, or the absence of notification that an e-mail was undeliverable, should be sufficient evidence of completed communication by those means.[100]

A number of prescribers sought narrower definitions of "completed" communications or more stringent requirements on sellers, such as the receipt of a confirmation of successful fax transmission and confirmation that someone was available in the prescriber's office within the eight-hour time period to respond.[101] Similarly, one commenter sought a requirement that sellers call prescribers to verify that the fax or e-mail verification request was in fact received, if the prescriber does not respond within eight hours.[102] One optometrist argued that the Rule requires that the prescriber must "receive" the verification request, and the only way to ensure this is to require some type of receipt or positive response from the prescriber.[103]

The specific question of whether a message left on an answering machine or voicemail constitutes a "completed" communication generated a number of comments. Most of these comments—primarily from prescribers and one of their trade associations—argued that the Rule should not permit voice messages.[104] These commenters stated, for example, that they often had difficulty transcribing the messages, thus increasing the potential for error,[105] and that sellers should not be allowed to leave confidential patient information on an answering machine.[106] Other commenters, however, favored allowing messages on answering machines.[107] One commenter argued that allowing voicemail messages helps avoid extended "phone tag," while another stated that prohibiting such messages would impose a significant burden on smaller sellers who are located in the Eastern time zone and are trying to communicate with offices of prescribers in Western time zones.[108]

The language of the Act does not specifically define when a seller's communication of verification information is completed. Legislative history is instructive on the issue of what constitutes a completed communication, however. In its Report, the House Committee made clear that it intended direct communication to mean "a message [that] has been both sent and received."[109]

Having considered the comments, the Commission declines to further define what constitutes a "completed" communication in the Rule. However, the Commission confirms, as explained in the NPRM, that a communication is "completed" when all of the required information is received by the recipient. For example, direct communication by telephone would require reaching and speaking with the intended recipient, or clearly leaving a voice message on the telephone answering machine of the intended recipient setting forth all of the required information. Direct communication by facsimile or electronic mail similarly would require that the intended recipient receive the facsimile or electronic mail message. A facsimile confirmation will usually provide a sufficient basis to conclude that a facsimile communication was successfully received. E-mails are typically received almost instantaneously after they are sent, so confirmation that an e-mail was sent will generally constitute a sufficient basis to conclude that the e-mail was received.[110]

It is incumbent upon the party initiating the communication to use a method that enables the recipient to receive all the information being communicated, and the eight-business-hour verification period does not begin until such receipt occurs. Moreover, sellers must document the communications as provided in part 315.5(f) of the final Rule.

The Commission also declines to impose additional requirements on sellers to confirm receipt of communications by prescribers. The Act reveals no indication that Congress intended to impose different standards when sellers communicate with prescribers than when prescribers communicate with sellers. The record

[99] 1–800 CONTACTS (Comment #1140).

[100] AC Lens (Comment #974) (Rule should not require active acknowledgment of receipt by recipient, as that would be contrary to the Act's passive verification scheme). *See also* Mercatus Center at George Mason University (Regulatory Studies Program) (Comment #1087) (urging Commission not to define "completed" communication too restrictively because the Act's intent appears to tolerate some errors, such as e-mails lost in cyberspace or a prescriber's fax machine running out of paper).

[101] Staff (Comment #131). *See also* C. Lesko, M.D. FACS (Comment #960) (seller should have to verify that fax was actually sent to and received by the appropriate prescriber's office, so that consumers do not use fake prescriber names and fax numbers).

[102] American Society for Cataract and Refractive Surgery (Comment #1148) (but proposing that fax confirmation and no error e-mail notice (or notification that addressee has received and/or read an e-mail) would be sufficient evidence of completion for communications by prescriber to seller).

[103] E. Lamp, O.D. (Comment #714).

[104] *E.g.*, Kansas Board of Examiners in Optometry (Comment #1007) (arguing seller has no way to know when prescriber receives message, and thus when eight-hour verification period begins and ends); C.F. Ford, O.D. (Comment #969); A.L. Warner (Comment #706); Wheaton Eye Clinic (Comment #416); E. Lamp, O.D. (Comment #714).

[105] American Optometric Association (Comment #1149) (suggesting at a minimum that prescribers be allowed to opt out of telephone verification); E. Attaya (Comment #952) (recordings are confusing and at times impossible to understand). *See also* Drs. Odom and Coburn (Comment #958) (citing difficulties with answering machine messages).

[106] Staff (Comment #131).

[107] *E.g.*, R. Weigner (Comment #1118); Wal-Mart Optical Division (Comment #1070) (arguing that it is reasonable to presume that prescribers listen to their messages).

[108] American Society of Cataract and Refractive Surgery (Comment #1148); AC Lens (Comment #974) (noting that message would include full information required by Act).

[109] H. Rep. No. 108–318, at 10 (2003).

[110] However, if the sender has reason to believe that an e-mail was not transmitted instantly (*e.g.*, receiving an electronic notification stating that the e-mail transmission was not successful) or that a facsimile was not transmitted, then the communication is not completed until it is actually received by the recipient.

also does not provide sufficient evidence to warrant such a revision to the Rule.[111]

7. Definition of "Issue Date"

Section 5(c) of the Act defines the "issue date" as "the date on which the patient receives a copy of the prescription." [112] The definition of "issue date" in the proposed Rule was taken verbatim from the Act.[113] Under section 315.6 of the Rule, contact lens prescriptions may not expire less than one year after the "issue date" unless medically necessary.

Several commenters suggested that the definition be modified to make clear that the "issue date" is the date on which the prescriber provides the patient with the prescription at the completion of the examination or fitting.[114] Most of these commenters indicated that a prescriber giving an additional copy of a prescription to a patient at some later date should not constitute another "issue date." If it did, the expiration date for the prescription could be extended one year from the new issue date.[115]

Section 2(a)(1) of the Act requires a prescriber to provide a copy of the prescription to the patient when the prescriber "completes a contact lens fitting." [116] The Commission does not believe Congress intended to allow patients to extend the prescription issue date—and thereby extend the prescription expiration date—by obtaining additional copies of prescriptions from prescribers subsequent to the completion of the contact lens fitting. The Commission has therefore concluded that the definition of "issue date" should be revised to clarify that it is "the date on which the patient receives a copy of the prescription *at the completion of a contact lens fitting.*"

8. Definition of "Ophthalmic Goods"

The proposed Rule defined "ophthalmic goods" to mean contact lenses, eyeglasses, or any component of eyeglasses.[117] The Commission received no comments on this definition, and adopts it without modification in the final Rule.

9. Definition of "Ophthalmic Services"

The proposed Rule defined "ophthalmic services" to mean the measuring, fitting, and adjusting of ophthalmic goods subsequent to an eye examination.[118] The Commission received no comments on this definition, and adopts it without modification in the final Rule.

10. Definition of "Prescriber"

The Commission's proposed Rule defined "prescriber" to mean, with respect to contact lens prescriptions, an ophthalmologist, optometrist, or other person permitted under State law to issue prescriptions for contact lenses in compliance with any applicable requirements established by the Food and Drug Administration.[119] This definition tracked the language of the Act verbatim.[120]

The Commission received a number of comments on this proposed definition, most of which related to the application of this definition to licensed opticians currently permitted under State law to fit contact lenses. According to the commenters, these opticians—sometimes referred to as "dispensing opticians"—may perform a contact lens fitting based on an eyeglass prescription that contains a notation from the prescriber that the patient is "OK for contact lenses" or similar language.[121]

Several commenters, including the Opticians Association of America, urged the Commission to make clear in the Rule that licensed dispensing opticians must release contact lens prescriptions to their patients at the end of a contact lens fitting.[122] The California Association of Dispensing Opticians noted that California law currently requires dispensing opticians to release prescriptions to patients.[123]

Having reviewed the comments, the Commission has concluded that, to the extent dispensing opticians are authorized under state law to issue prescriptions, they are "prescribers" under the Act and are required to release contact lens prescriptions at the completion of a contact lens fitting just like other prescribers. The Commission believes that such a requirement is both consistent with, and necessary to fully effectuate, Congress's intent to provide consumers with their prescriptions. Accordingly, the Commission's final Rule defines "prescriber" to include opticians authorized or permitted under state law to perform contact lens fitting services who also are permitted to issue contact lens prescriptions.[124]

11. Definition of "Private Label Contact Lenses"

Section 315.2 of the proposed Rule defines "private label contact lenses" as "contact lenses that are sold under the label of a seller where the contact lenses are identical to lenses made by the same manufacturer but sold under the labels of other sellers." [125] This proposed definition was derived from Section 4(f) of the Act.[126] The Commission received no comments on the proposed definition, and therefore adopts it without modification in the final Rule.

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[111] The Commission also declines to allow the presumption of a "completed" communication based merely on evidence that a fax or e-mail had been attempted twice, or evidence that live telephone verification had been attempted, as one commenter suggested. The Act requires that prescribers actually receive a verification request for a direct communication to occur.

[112] 15 U.S.C. 7604(c).

[113] *See* 69 FR at 5448.

[114] American Optometric Association (Comment #1149); Dr. K. Poindexter (Comment #260); W. West, O.D. (Comment #126); W. Barr, O.D. (Comment #1068); Arizona Optometric Association (Comment #1072) (suggesting that prescription expiration period begin when prescriber determines contact lens parameters); 1–800 CONTACTS (Comment #1140) (suggesting "the date on which the patient, *or any person designated to act on behalf of the patient, first* receives a copy of the prescription").

[115] A few commenters suggested that the "issue date" be defined as the date the prescriber writes the prescription or as some earlier date. *E.g.*, American Society for Cataract and Refractive Surgery (Comment #1148) (suggesting the date the prescriber writes the prescription); R. Weigner (Comment #1118) (suggesting the actual date on which the prescription was written, and recommending that pre- or post-dating of prescriptions be expressly disallowed); S.J. St. Marie, O.D. (Comment #1121) (suggesting that the issue date be earlier than the release date when the prescriber requires the patient to use the lenses on a diagnostic trial basis). Section 5(c) of the Act mandates the "patient receipt" standard contained in the proposed Rule. Consequently, the Commission declines to implement the requested changes in the final Rule.

[116] 15 U.S.C. 7601(a)(1).

[117] *See* 69 FR at 5449.

[118] *See* 69 FR at 5449.

[119] *See* 69 FR at 5449.

[120] 15 U.S.C. 7610(2).

[121] *E.g.*, K. Green (Comment #4); D. Acosta (Comment #14).

[122] K. Green (Comment #4); Opticians Association of America (Comment #1059); California Association of Dispensing Opticians (Comment #1104).

[123] Comment #1104.

[124] One commenter also recommended that the Commission revise the definition of "contact lens prescription" to include "an eyeglass prescription and the notation 'OK for contact lenses' or similar language on the prescription provided there are no contraindications for contact lenses." D. Acosta (Comment #14). The Commission believes the revised definition of "prescriber" adequately addresses this comment.

Another commenter recommended that the Rule prohibit anyone from fitting and dispensing contact lenses unless that person is properly licensed to write a prescription. Kentucky Optometric Association (Comment #1101). *See also* Ohio Optometric Association (Comment #1151) (urging Commission to state in the Rule that contact lens "fitting" may be initiated and directed only by a licensed optometrist or ophthalmologist). The question of who is authorized to fit contact lenses is beyond the scope of the Act; it is a question that is properly resolved as a matter of State law.

[125] 69 FR at 5448.

[126] 15 U.S.C. 7603(f).

C. Section 315.3: Availability of Contact Lens Prescriptions to Patients

1. 315.3(a)—In general

a. The Prescription Release Requirement

Section 2(a)(1) of the Act requires that "when a prescriber completes a contact lens fitting, the prescriber—(1) whether or not requested by the patient, shall provide a copy of the contact lens prescription to the patient."[127] Section 315.3(a)(1) of the proposed Rule tracks the language of the Act verbatim.[128] For the reasons set forth below, the Commission adopts this provision without modification in the final Rule.

As an initial matter, the Commission notes that thousands of consumers submitted comments expressing strong support for the Act and proposed Rule's prescription release requirement.[129] Many of these commenters felt strongly that the contact lens prescription belongs to the consumer.[130] Others stated that contact lens consumers should have the same prescription release rights as eyeglasses wearers.[131]

The State Attorneys General expressed hope that the prescription release requirement will accelerate the frequency with which patients provide an actual copy of the prescription to a non-prescribing seller.[132] The State Attorneys General noted that elimination of the need for verification under such circumstances will allow the seller to ship the lenses immediately. House Judiciary Committee Chairman Sensenbrenner, a co-sponsor of the Act, pointed out that the intent of the Act is "to allow consumers to receive their contact lens prescriptions so they can easily shop around to buy their lenses from any number of suppliers."[133]

A few prescribers expressed concern about the health implications of the immediate prescription release obligation imposed by section 315.3(a)(1).[134] Section 2(a)(1) of the Act,[135] however, expressly requires prescribers to release contact lens prescriptions to patients when the "prescriber completes a contact lens fitting," not at some later date.

Several commenters expressed the concern that prescribers may pressure consumers to purchase contact lenses from them if, prior to releasing the written prescription, prescribers can try to persuade consumers to make such a purchase. These commenters urge the Commission to require that prescribers release the written prescription immediately following the contact lens fitting and before attempting to sell and dispense contact lenses.[136] The Act does not impose any such restriction on prescribers. Moreover, because the Act and the Rule provide that prescribers may not require the patient to purchase contact lenses from them or from another person, *see* 15 U.S.C. 7601(b) and section 315.3(b)(1) of the Rule, consumers already have protection against pressure to purchase from the prescriber. The Commission therefore has determined not to require that prescribers release the written prescription immediately following the contact lens fitting and before attempting to sell and dispense contact lenses.

A few commenters suggested that the prescriber be given the option to not release the prescription or to release it for "informational purposes only" if the patient has purchased a full year's supply of contact lenses at the time of the eye examination.[137] Because such an exception would be contrary to the Act's express requirement that consumers receive a copy of their prescription at the completion of a contact lens fitting, it is not included in the final Rule.

Two commenters recommended that the prescription release obligation be limited to one release per patient.[138] Section 2(a)(1) of the Act mandates the release of the patient's contact lens prescription to the patient at the completion of the contact lens fitting.[139] The Act neither requires prescribers to, nor prohibits them from, releasing additional copies of the prescription. The Commission declines to require or prohibit by Rule the release of additional copies of the prescription.

Finally, a number of prescribers suggested that custom-designed soft lenses and rigid gas permeable lenses be exempt from the release requirement because such lenses require significant interaction between the prescriber and the manufacturer as well as proper follow-up and medical management.[140] In contrast, one seller recommended that the Commission not make an exception for rigid gas permeable and other specialized made-to-order lenses, because it supplies such lenses to consumers more conveniently and at significant savings compared to prescribers.[141] Section 2(a)(1) of the Act mandates simply that the prescriber "provide to the patient a copy of the contact lens prescription."[142] The Act thus does not permit the Commission by rule to grant an exception to the release requirement for custom-designed soft and rigid gas permeable lenses. Moreover, the record indicates that some sellers (other than prescribers) can supply such lenses to consumers. Consequently, the creation of an exception to the release requirement for custom-designed soft and rigid gas

[127] 15 U.S.C. 7601(a)(1).

[128] *See* 69 FR at 5449.

[129] *E.g.*, Consumers (Comments ##28, 29, 30, 31, 32, 33, 34, 36, 38, 40, 43, 44, 45, 48, 49, 51, 54, 56, 57, 59, 60, 64, 69, 71, 72, 73, 74, 75, 78, 79, 82, 83, 84, 87, 89, 90, 91, 92, 93, 94, 96, 97, 98, 100, 102, 105, 106, 107, 108, 109, 110, 111, 114, 115, 118, 119, 120, 121, 122, 123, 124, 132, 147, 152, 153, 155, 159, 163, 166, 169, 170, 171, 173, 174, 176, 178, 179, 181, 183, 184, 186, 187, 189, 190, 191, 192, 195, 198, 199, 201, 202, 203, 204, 205, 206, 207, 209, 210, 212, 213, 215, 217, 218, 219, 220, 222, 223, 226, 227, 228, 229, 230, 231, 232, 234, 235, 238, 240, 241, 242, 245, 246, 247, 248, 249, 250, 253, 255, 256, 257, 258, 259, 262, 263, 264, 265, 267, 272, 276, 281, 287, 289, 290, 292, 308, 315, 326, 327, 337, 342, 349, 358, 364, 380, 441, 451, 455, 465, 514, 519, 521, 539, 624, 653, 698, 726, 740, 761, 762, 765, 772, 775, 776, 777, 790, 793, 795, 798, 802, 806, 807, 808, 809, 813, 816, 820, 824, 825, 830, 836, 837, 841, 845, 848, 853, 859, 871, 873, 875, 878, 879, 880, 881, 892, 895, 897, 898, 922, 923, 936, 955, 967, 994, 1008, 1069, 1098, 1099, 1131, 1186, 1215, 1216, 1220, 1222, 1235).

[130] *E.g.*, Consumers [Comment ##1201 ("I have the undeniable right to have a copy of my Rx for my records, whether I choose to do anything with it or not"); Comment #1221 ("my prescription belongs to me, not the doctor to hold for ransom")].

[131] *E.g.*, Consumers (Comments ##27, 43, 45, 65, 66, 70, 85, 86, 101, 105, 160, 209, 222, 225, 246, 255, 259, 266, 274, 293, 295, 301, 303, 310, 314, 321, 336, 344, 370, 384, 396, 402, 414, 432, 449, 493, 496, 497, 652, 656, 664, 693, 772, 798, 805, 806, 833, 873, 881, 895, 898, 921, 939, 950, 956, 988, 1004, 1182, 1193, 1194, 1214, 1216, 1220, 1226).

[132] State Attorneys General (Comments ##1114, 1176).

[133] Hon. F. James Sensenbrenner, Jr., U.S. House of Rep. (Comment #1246).

[134] A. Richards (Comment #2) (recommending that release not be required until the patient has safely worn the contact lenses for 6 months, and noting that it often takes several weeks before corneal problems are manifested); D. Pao (Comment #139) (noting that the proper prescription is typically not decided at the initial fitting visit, but normally, at the follow-up visit in 1–2 weeks, and in most cases by 4–6 weeks). One prescriber was concerned that the release obligation is not in the best interest of the consumer because contact lens sellers have no knowledge of preventative care. A.D. Adins, O.D. (Comment #1133).

[135] 15 U.S.C. 7601(a)(1).

[136] 1–800 CONTACTS (Comment #1140); William F. Shughart, II, Ph.D., on behalf of 1–800–CONTACTS (Comment #975); The Independent Women's Forum (Comment #1236); Americans for Prosperity (Comment #1145). *See also* discussion of section 315.3(b)(2), *infra*, concerning the ability of prescribers to offer a bundled package of an eye examination and contact lenses.

[137] North Carolina State Optometric Society (Comment #1074); M. Walker (Comment #165).

[138] Nebraska Optometric Association (Comment #1083); Dr. K. Poindexter (Comment #260).

[139] 15 U.S.C. 7601(a)(1).

[140] American Society for Cataract and Refractive Surgery (Comment #1148); Colorado Optometric Association (Comment #1067); California State Board of Optometry (Comment #21) (requesting exception for rigid gas permeable, bitoric gas permeable, bifocal gas permeable, keratoconus and custom lenses); Wheaton Eye Clinic (Comment #416); S. Carlson, O.D. (Comment #906); G. Lozada (Comment # 1063).

[141] AC Lens (Comment #974).

[142] 15 U.S.C. 7601(a)(1).

permeable lenses would be inconsistent with the Act's goal of meaningful prescription portability and increased consumer choice. The final Rule accordingly includes no such exception.

b. The Prescription Verification Requirement

Section 2(a)(2) of the Act requires that, when a prescriber completes a contact lens fitting, the prescriber "shall, as directed by any person designated to act on behalf of the patient, provide or verify the contact lens prescription by electronic or other means." [143] Section 315.3(a)(2) of the proposed Rule tracks the language of the Act verbatim.[144] For the reasons set forth below, the Commission adopts the proposed provision without modification in the final Rule.

Prescriber trade associations recommended that sellers be required to obtain written proof of authority to act on the patient's behalf.[145] In contrast, one seller urged the Commission to clarify in the final Rule that sellers or other agents are not required to have a written agency agreement to act on a patient's behalf, because the Act allows for verification by telephone.[146]

After reviewing the comments, the Commission has not included in the final Rule the requirement that sellers present written proof that they are agents of consumers. Section 4(g) of the Act expressly includes communications by telephone as a means of "direct communication" that sellers can use to submit verification information to prescribers.[147] The Act therefore clearly contemplates that the entire verification process can be conducted by telephone, which implicitly precludes requiring written proof that a seller is an agent of a consumer.[148]

A few prescribers commented that the Rule does not state how many times a prescriber is required to verify a prescription.[149] These commenters were concerned that prescribers must bear the burden of verification requests from multiple sellers, even though the patient has already received a copy of the prescription. The Act clearly imposes two separate obligations upon prescribers at the completion of a contact lens fitting. First, prescribers must provide a copy of the prescription to the patient.[150] Second, prescribers must provide or verify the prescription as directed by any person designated to act on behalf of the patient.[151] Consequently, the Act itself mandates that prescribers may have to respond to verification requests from multiple sellers.

2. 315.3(b)—Limitations

Section 315.3(b) of the proposed Rule would prohibit prescribers from imposing certain conditions on the release or verification of a contact lens prescription.[152] Specifically, a prescriber may not (1) require a patient to purchase contact lenses from the prescriber or from another person, (2) require payment in addition to, or as part of, the fee for an eye examination, fitting, and evaluation, or (3) sign a waiver or release of liability, as a condition of release or verification.[153] The proposed Rule tracked the Act almost verbatim,[154] and, as discussed below, the Commission adopts this provision without modification in the final Rule.

a. Section 315.3(b)(1)

The Commission received numerous comments relating to the prohibition against prescribers' requiring the purchase of contact lenses as a condition of prescription release. Most of these commenters urged the agency to add an exception in the Rule for "specialty" or "custom" lenses—such as rigid gas permeable and toric lenses—which are manufactured specifically for an individual patient and for which manufacturers do not provide free trial pairs.[155] According to these commenters, such lenses include lenses to treat keratoconus, high and irregular astigmatic lenses, and lenses used for orthokeratology. A prescriber must purchase these lenses from the manufacturer—at a typical cost in the range of $150 per pair—to conduct the fitting process, and the prescriber may not be able to return the lenses to the manufacturer.[156] The commenters contend that prescribers should be permitted to require their patients to pay for these lenses prior to releasing the contact lens prescription. Otherwise, the prescriber would have to absorb the cost of these lenses if a patient takes the prescription and fills it elsewhere.[157] One trade association estimated that such lenses account for a very small percentage of contact lens sales—less than 5% for its members—and that non-prescribers (*i.e.*, mail order and mass merchant sellers) do not typically sell these lenses anyway.[158]

The Act expressly prohibits prescribers from conditioning prescription release on the purchase of contact lenses. The Commission thus does not have the authority to grant an exception to that prohibition. Moreover, the record indicates that some sellers (other than prescribers) can supply custom-designed soft and rigid gas permeable lenses to consumers. Consequently, the creation of an exception for custom-designed soft and rigid gas permeable lenses would be inconsistent with the Act's goal of meaningful prescription portability and increased consumer choice. The final Rule accordingly includes no such exception.

Nevertheless, as the commenters explained, "speciality" or custom-made lenses are sometimes necessary to complete the fitting process. To the extent these lenses are necessary to complete the fitting process, prescribers may charge patients for such lenses as part of the cost of the fitting process,[159] and as such may condition the release of a contact lens prescription on payment of the fitting fee.

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[143] 15 U.S.C. 7601(a)(2).

[144] *See* 69 FR at 5449.

[145] American Society for Cataract and Refractive Surgery (Comment #1148); New York State Optometric Association (Comment #1073); Florida Board of Optometry (Comment #1100). Two of these commenters also expressed concern about state professional responsibility rules that may prohibit the release of patient information without written consent. New York State Optometric Association (Comment #1073); Florida Board of Optometry (Comment #1100).

[146] 1–800 CONTACTS (Comment #1140).

[147] 15 U.S.C. 7603(g).

[148] Moreover, the consumer must provide his or her prescription information to the seller to begin the verification process, which itself is probative as to whether the seller is the consumer's agent.

[149] Staff (Comment #131); E. Attaya (Comment #952).

[150] 15 U.S.C. 7603(a)(1).

[151] 15 U.S.C. 7603(a)(2).

[152] *See* 69 FR at 5449.

[153] *Id.*

[154] 15 U.S.C. 7601(b).

[155] *E.g.*, D. Hughes (Comment #712); National Association of Optometrists and Opticians (Comment #1146); American Optometric Association (Comment #1149); Illinois Optometric Association (Comment #1005); W. Lindahl (Comment #7); K. Green (Comment #4); J. Owen (Comment #154). *See also* Texas Ophthalmological Association (Comment #1117) (prescribers should be able to charge for lenses necessary to complete the fitting process); California Optometric Association (Comment #1158) (same); Arizona Optometric Association (Comment #1072) (Rule should address specialty lenses); Arizona Medical Association (Comment #1130) (same).

[156] National Association of Optometrists and Opticians (Comment #1146) (historically patients have been required to pay for these lenses in conjunction with the fitting, typically in the range of $150 per pair).

[157] Notably, these commenters did not object to releasing the prescription to the patient at the completion of the fitting process. *E.g.*, American Optometric Association (Comment #1149).

[158] National Association of Optometrists and Opticians (Comment #1146).

[159] One commenter suggested that the cost of such lenses be incorporated into the contact lens fitting fee. A.L. Warner (Comment #706). Another commenter advised against "bundling" the cost of the lenses into the fitting fee itself, because the prices of such lenses vary. Texas Ophthalmological Association (Comment #1117).

b. Section 315.3(b)(2)

This provision of the proposed Rule prohibits prescribers from requiring payment in addition to, or as part of, the fee for an eye examination, fitting, and evaluation, as a condition of prescription release or verification. The Commission received few comments on this provision and adopts it without modification in the final Rule.

One commenter recommended that prescribers be allowed to charge a reasonable fee for providing verification services to their competition.[160] The Act expressly prohibits such a fee. Another commenter sought clarification that prescribers may bill patients for a contact lens fitting and medically necessary follow-up exams, in addition to a regular eye exam.[161] Section 315.3(b)(2) of the Rule expressly permits prescribers to charge for these services, consistent with section 315.4, as a condition of releasing a contact lens prescription.

Another commenter asked the Commission to clarify that the Rule prohibits prescribers from requiring payment for "service agreements" or similar follow-up exams beyond the contact lens fitting.[162] According to this commenter, a survey conducted in Texas in October 2000 showed that prescribers charged customers for a "service agreement" covering follow-up visits, which tie the patient to that prescriber's office. If such follow-up visits are not part of the contact lens fitting process—*i.e.*, medically necessary—then the Act expressly prohibits requiring payment for them as a condition of prescription release or verification.

On a similar point, a few commenters raised the issue of whether section 315.3(b) permits "bundling" practices by prescribers. One commenter asked the Commission to clarify that this section does not prohibit prescribers from offering a "package deal" on an exam and the initial set of diagnostic lenses used to establish proper fit, medical suitability for contact lens wear, etc.[163] This commenter argued that practitioners should be able to compete with other contact lens providers by offering services in a bundled package, so long as they do not charge an extra fee for providing the prescription.

Other commenters complained about the practice of bundling.[164] For example, one contact lens seller expressed concern that section 315.3(b) permits bundling and therefore allows prescribers to coerce consumers into buying contact lenses from them, before releasing the contact lens prescription.[165]

The Act does not prohibit a prescriber from offering a bundled package of an eye examination and contact lenses, provided that consumers have the option to purchase the eye examination separately and still receive their prescription. The Commission thus clarifies that bundling of the eye examination and contact lenses is not a per se violation of the Act or the final Rule.

In its NPRM, the Commission specifically asked for comment about whether prescribers itemize charges and fees in a manner that distinguishes the amount the patient is paying for an eye examination, fitting, and evaluation from the amount he or she is paying for contact lenses.[166] One commenter indicated that a patient's receipt typically itemizes the charges into accepted insurance codes, and suggested that no further itemization is necessary.[167] Another commenter reported that prescribers commonly use package deals as means of avoiding itemizing charges and fees, and suggested that the Rule require itemization of all charges and fees presented to the patient for payment at the end of a contact lens fitting.[168] The Commission concludes that the record does not contain sufficient evidence to warrant a requirement that prescribers itemize their charges on a patient's bill.

Finally, one commenter asked the Commission to prohibit additional conduct by prescribers that undermines prescription portability and the intent of the Act.[169] For example, this commenter recommended that the Rule prohibit prescribers from discussing the purchase of contact lenses prior to releasing the consumer's prescription. The commenter also asked that the Rule require prescribers to inform consumers in writing, before the fitting process begins, of their right under the Act to receive their prescription. The Act does not address such prescriber conduct, and the Commission has determined not to incorporate any restrictions on such conduct into the final Rule.[170]

c. Section 315.3(b)(3)

This provision of the proposed Rule prohibited prescribers from requiring a patient to sign a waiver or release as a condition of releasing or verifying a prescription.[171] The Commission received no comments on this provision, and adopts it without modification in the final Rule.

D. Section 315.4: Limits on Requiring Immediate Payment

Section 315.4 of the proposed Rule states that a "prescriber may require payment of fees for an eye examination, fitting, and evaluation before the release of a contact lens prescription, but only if the prescriber requires immediate payment in the case of an examination that reveals no requirement for ophthalmic goods."[172] The provision further states that "for purposes of the preceding sentence, presentation of proof of insurance coverage for that service shall be deemed to be a payment."[173] The language in the proposed Rule tracks section 3 of the Act verbatim.[174] For the reasons set forth below, the Commission adopts the proposed provision without modification in the final Rule.

One prescribers' trade association stated that some of its members have misinterpreted this provision as prohibiting them from requiring payment of fees for an eye exam, fitting and evaluation before the release of a contact lens prescription.[175] The Commission believes that the language of the proposed Rule is clear that requiring payment of fees for an eye exam, fitting and evaluation before the release of a contact lens prescription is permissible, but only if the prescriber also requires immediate payment in the case of an examination that reveals no

[160] D.S. Dwyer, M.D. (Comment #1071).

[161] S. Wagner (Comment #1107); see also Illinois Optometric Association (Comment #1005) (seeking clarification that a prescriber may require a comprehensive eye exam before performing a contact lens fitting and releasing the contact lens prescription). S. Wagner (Comment #1107) also asked the Commission to clarify that prescribers may charge a fee for verifying a contact lens fitting originally performed by another prescriber—*i.e.*, to confirm, for a new patient, that a previous fit is still valid and correct. If the service described by this commenter effectively constitutes a "contact lens fitting," the prescriber may charge the consumer for this service as it would for any contact lens fitting.

[162] Consumers Union (Comment #1139).

[163] American Academy of Ophthalmology (Comment #1057).

[164] *E.g.*, Consumers Union (Comment #1139).

[165] 1–800 CONTACTS (Comment #1140).

[166] 69 FR at 5447.

[167] Illinois Optometric Association (Comment #1005).

[168] Consumers Union (Comment #1139).

[169] 1–800 CONTACTS (Comment # 1140).

[170] The same commenter also recommended that the Commission add a provision to the Rule prohibiting prescribers from using a seller's verification request to interfere with a pending contact lens sale. *See id.* The Commission believes that adding such a provision would exceed the mandate of the Act.

[171] *See* 69 FR at 5449.

[172] *Id.*

[173] *Id.*

[174] *See* 15 U.S.C. 7602.

[175] American Society for Cataract and Refractive Surgery (Comment #1148).

need for contact lenses or other ophthalmic goods.

Another prescribers' trade association asked the Commission to clarify that insurance coverage must be "current" and "valid" to ensure that patients do not attempt to defraud providers.[171] A few commenters also asked the Commission to clarify that this provision of the Rule does not require a prescriber to accept as payment proof of insurance from an insurance plan in which the prescriber does not participate.[172] In response, the Commission notes that the Act and the proposed Rule require that prescribers accept "proof of insurance coverage" as a form of payment. Clearly, to be a form of payment, the policy must cover the patient, be current, and be accepted by the prescriber. The Commission does not believe that any changes to the proposed Rule are needed to address the meaning of "proof of insurance coverage."[173] Regulating insurance plans or their discount policies is beyond the scope of the Act.

E. Section 315.5: Prescriber Verification

1. 315.5(a)—Prescription Requirement

Section 315.5(a) of the proposed Rule stated that a "seller may sell contact lenses only in accordance with a contact lens prescription for the patient that is: (1) presented to the seller by the patient or prescriber directly or by facsimile; or (2) verified by direct communication."[174] This provision was taken verbatim from the Act.[175] For the reasons set forth below, the Commission retains the same language in the final Rule.

a. Use of Copies

A number of individual prescribers and state optometric associations recommended that the Rule be revised to require the seller to obtain the original prescription and prohibit the use of copies.[176] These commenters expressed concern that patients may use copies of the prescription to circumvent either the prescription expiration period or the number of refills allowed. One seller, in contrast, asked the Commission to clarify that the seller is not required to have the original prescription to sell contact lenses.[177] The Commission notes that section 4(a)(1) of the Act states expressly that a prescription may be presented to a seller "directly or by facsimile."[178] A requirement that the seller obtain the original prescription would directly conflict with the phrase "by facsimile" in the statute. The Commission has therefore decided not to revise the Rule to require the seller to obtain the original prescription.

b. Presentation of Prescriptions "Directly or by Facsimile"

A few commenters requested that the Commission broadly interpret the phrase "directly or by facsimile" in Section 4(a)(1) of the Act[179] and section 315.5(a)(1) of the Rule. One seller suggested that the Rule expressly permit prescription information to be provided to the seller in person or by telephone, facsimile, electronic mail or a substantially equivalent future technology.[180] The State Attorneys General commented that a patient should be able to deliver a digital image of a prescription (*i.e.*, a scanned copy) directly to the seller via electronic mail.[181]

The Commission has concluded that a patient or a prescriber may present the prescription to a seller in person, by mail, by facsimile, or through a digital image of the prescription that is sent via electronic mail.[182] All of these communication mechanisms allow the seller to view either the original or an exact copy of the prescription that was written by the prescriber. Consequently, these communication mechanisms allow the patient or prescriber to present the prescription "directly or by facsimile" to the seller under section 4(a)(1) of the Act and section 315.5(a)(1) of the Rule.

Furthermore, the Commission has concluded that the provision of prescription information from the consumer to the seller by telephone or by e-mail (other than an e-mail containing a digital image of the prescription, as discussed above) does not meet the "directly or by facsimile" standard imposed by section 4(a)(1) of the Act.[183] Telephone or e-mail communications are not expressly referenced in section 4(a)(1) of the Act, which addresses direct presentation requirements. In contrast, Section 4(g) of the Act states that a direct communication for verification purposes can be sent by "telephone, facsimile or electronic mail."[184] Thus, Congress expressly allowed telephone and e-mail communications for verification purposes in section 4(g) of the Act, but did not similarly allow telephone and e-mail communications for direct presentation purposes in section 4(a)(1) of the Act. Unlike the verification process, the direct presentation process may occur without the prescriber's involvement. Accordingly, the Act imposes a heightened level of scrutiny by requiring the seller to obtain the prescription "directly or by facsimile." Consequently, if the patient reads the prescription information to the seller on the telephone or provides prescription information (as opposed to a digital image of the prescription) to the seller via e-mail or other electronic means, the prescription must be verified pursuant to section 315.5(d) of the Rule before the seller may supply lenses to the patient.

The Commission has further decided not to include "substantially equivalent future technologies" within the scope of acceptable direct presentation mechanisms. Section 4(a)(1) of the Act does not expressly reference or contemplate future technologies, and the Commission is not aware of other technologies which meet the statutory standard. The Commission therefore declines to include future technologies that do not involve an exact copy of the prescription within the scope of acceptable direct presentation mechanisms at this time.

c. Delegation of Verification Obligations

A few commenters recommended that the Rule be revised to provide prescribers with the ability to delegate

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[171] American Academy of Ophthalmology (Comment #1057).

[172] American Academy of Ophthalmology (Comment #1057); American Society for Cataract and Refractive Surgery (Comment #1148); K. Green (Comment #4).

[173] One seller noted that some insurance plans provide discounts on lens purchases only if the patient purchases lenses from the same prescriber who provided the exam, and recommended that the Rule prohibit such practices in insurance or pricing policies. 1–800 CONTACTS (Comment #1140).

[174] 69 FR at 5449.

[175] *See* 5 U.S.C. 7603(a).

[176] Illinois Optometric Association (Comment #1005); Colorado Optometric Association (Comment #1067); Nebraska Optometric Association (Comment #1083); M. Palermo (Comment #22); M. Dean (Comment #148); J. Barnes (Comment #239); D. Hughes (Comment #712); S. Carlson, O.D. (Comment #906); D.S. Dwyer, M.D. (Comment #1071); J.L.Walters, O.D. (Comment #1109); S. Wagner (Comment #1107).

[177] Wal-Mart Optical Division (Comment #1070).

[178] 15 U.S.C. 7603(a)(1).

[179] 15 U.S.C. 7603(a)(1).

[180] 1–800 CONTACTS (Comment #1140).

[181] State Attorneys General (Comments ##1114 and 1176).

[182] One definition of "facsimile" is "an exact copy." Merriam-Webster New Collegiate Dictionary 410 (1977). The Commission has concluded that a digital image of a prescription that is sent via electronic mail is "an exact copy" of the actual prescription, and therefore meets the "directly or by facsimile" standard set forth in section 4(a)(1) of the Act.

[183] The Commission's Rule is not intended to prohibit prescribers from using such mechanisms to issue contact lens prescriptions or orders to the extent authorized by other applicable law, however. *See, e.g.*, 21 CFR 801.109(a)(2).

[184] *See* 15 U.S.C. 7603(g).

their verification obligations to specific individuals in their offices.[185] The Commission declines to make the requested revision, and notes that neither the Act nor the Rule prohibits a prescriber from delegating the authority to respond to verification requests. The prescriber, however, remains responsible for ensuring that such staff members acting on his or her behalf comply with the Act and the Rule.

2. 315.5(b)—Information for Verification

Section 315.5(b) of the proposed Rule sets forth the information that a seller must provide the prescriber through direct communication when the seller is seeking to verify a contact lens prescription.[186] The proposed Rule required the seller to provide the prescriber with the following specific information: (1) The patient's full name and address; (2) the contact lens power, manufacturer, base curve or appropriate designation, and diameter when appropriate; (3) the quantity of lenses ordered; (4) the date of patient request; (5) the date and time of verification request; (6) the name of a contact person at the seller's company, including facsimile and telephone numbers.[187] This provision of the proposed Rule was taken verbatim from section 4(c) of the Act.[188]

a. Saturday Business Hours

As discussed above, the Commission has modified the definition of "business hour" in section 315.2 of the final Rule to "include, at the seller's option, a prescriber's regular business hours on Saturdays, provided that the seller has actual knowledge of these hours." To facilitate the use of Saturday business hours, the Commission has revised section 315.5(b) of the final Rule to require sellers who opt to count such hours to state the prescriber's Saturday business hours in the verification request. Specifically, section 315.5(b)(7) of the final Rule provides that "if the seller opts to include the prescriber's regular business hours on Saturdays as "business hours" for purposes of paragraph (c)(3) of this section," the verification request must include "a clear statement of the prescriber's regular Saturday business hours." This information must be included in the verification request to alert the prescriber in case the seller is relying upon inaccurate information regarding the prescriber's regular Saturday business hours.[189]

b. Format of Required Information

Numerous commenters requested that the Commission either revise the Rule to require a standard verification request form or publish a model verification request form.[190] The Commission has decided not to modify the Rule to require the use of a standard verification form. Each seller thus retains flexibility to develop the best form for its verification requests. Nevertheless, the Commission emphasizes that any verification form used must provide prescribers with all of the required prescription verification information and should also provide prescribers with sufficient opportunity (*e.g.*, space on a form) to indicate that a particular prescription is expired, not the prescriber's patient, inaccurate, or otherwise invalid.[191]

A number of prescriber groups and individual prescribers submitted comments expressing concern that verification requests from sellers often do not contain required information, including the date and time of the request.[192] Inclusion of such information on verification requests is central to the Rule's effective operation. The Commission emphasizes that the sale of contact lenses based on a verification request which does not contain all of the required information constitutes a Rule violation.

c. Additional Information in Verification Requests

One prescriber trade association and an individual prescriber suggested that the verification request include additional information, such as the patient's telephone number and the patient's date of birth, which prescribers can use to search their records for the patient's file and to ensure that verification requests for individuals with the same name and same address do not create confusion.[193] However, the commenters did not provide any evidence suggesting that the verification information required by section 315.5(b) of the proposed Rule would be insufficient to allow prescribers to search their patient files. Moreover, the commenters did not provide evidence regarding the frequency with which the "same name, same address" problem actually arises. Absent such evidence, the Commission declines to implement the requested change.

A State optometry association requested that the verification request contain the prescription's expiration date as well as the number of refills prescribed.[194] Regarding the prescription expiration date, the Commission notes that prescribers should have this information because they issued the prescription and specified any expiration date of less than one year. Indeed, section 4(e) of the Act clearly places the burden on the prescriber to notify the seller if a prescription is expired.[195] With respect to the number of refills prescribed, the Commission notes that the Act does not require contact lens prescriptions to include such information. Moreover, there is no reason to believe or evidence to suggest that a seller who is attempting to verify a prescription would necessarily have information as to the number of refills prescribed.[196] For these reasons, the Commission declines to impose the requested changes.

Another state optometric association recommended that the seller be required to provide its e-mail address on the

[185] *E.g.*, Wal-Mart Optical Division (Comment #1070); American Society for Cataract and Refractive Surgery (Comment #1148).

[186] *See* 69 FR at 5449.

[187] *Id.*

[188] 15 U.S.C. 7603(c).

[189] One seller recommended that sellers be required to include this type of information in verification requests. 1–800 CONTACTS (Comment #1140).

[190] American Optometric Association (Comment #1149) (requesting model form); North Carolina State Optometric Society (Comment #1074); Oklahoma Association of Optometric Physicians (Comment #1125); Kansas Optometric Association (Comment #1153); Nebraska Optometric Association (Comment #1083); D. Ball (Comment #849); M. Spittler (Comment #158); New Mexico Optometric Assoc (Comment # 1081); Kentucky Optometric Association (Comment #1101); Arizona Optometric Association (Comment #1072); Ohio Optometric Association (Comment # 1151); K. Driver, O.D., Optometrist, P.A. (Comment #273); Olathe Family Vision (Comment #971); S. Bryant, O.D. (Comment #1127).

[191] Prescribers and prescribers' trade associations have submitted comments indicating that sellers' current verification response forms do not contain an "expired" option or do not provide options fitting typical situations. *E.g.*, Wisconsin Optometric Association (Comment #1086); D. Tabak (Comment #23); M. Spittler (Comment #158); Dr. G.S. Leekha (Comment #24).

[192] American Optometric Association (Comment #1149); Colorado Optometric Association (Comment #1067); Staff (Comment #131); Your Family Eye Doctors, Inc. (Comment #705); D. Hughes (Comment #712).

[193] National Association of Optometrists and Opticians (Comment #1146)(telephone number and date of birth); C.W. Kissling, O.D. (Comment #452) (date of birth).

[194] New York State Optometric Association (Comment #1073). This commenter also suggested that the verification request include the number of refills requested. In response, the Commission notes that section 315.5(b)(3) requires the seller to list the quantity of lenses ordered on the verification request.

[195] 15 U.S.C. 7603(e).

[196] For example, a seller would not have this information if the consumer had used a different seller in the past to refill a prescription.

verification form.[197] In response, the Commission notes that the Act allows the use of e-mail for direct communications between sellers and prescribers. Nothing in the Act, however, forces either sellers or prescribers to use e-mail as a means of communicating. Consequently, because sellers are not required to accept responses to verification requests by e-mail, the Commission declines to require that the e-mail address of sellers be included on the verification form.

A few prescribers requested that the seller be required to verify or confirm that the prescriber who is being asked to verify the prescription is the prescriber who fitted the contact lenses in question.[198] Otherwise, these commenters stated, a verification request that is sent to the wrong prescriber may be filled via passive verification because the prescriber neglects to respond to it. The Commission declines to implement the requested change because prescribers have the ability to respond that such verification requests are "invalid" under section 315.5(d) of the Rule. In addition, a verification request sent to the wrong prescriber does not conform with the requirements of the Act and section 315.5(b) of the Rule, and thus does not commence the eight-business-hour verification period.

d. Contact Person at the Seller's Company

Regarding the requirement in section 315.5(b)(6) of the Rule that the verification request include the name of a contact person at the seller's company, one prescribers' trade association commented that the person whose name is provided should be accessible to the prescriber and actually be handling the verification request.[199] This provision of the Rule is intended to ensure that the prescriber is able to reach a responsible person at the seller's company rather than requiring that the prescriber be able to reach the specific person who is handling the verification request. The Commission thus agrees that the seller's listed contact person or, if that contact person is unavailable, an alternate person who is familiar with the verification request and is authorized to respond to the prescriber, must be reasonably accessible to the prescriber. However, the person whose name is provided on the verification form need not personally handle the verification request because such a requirement would be impractical.

In comparison, one seller recommended that the contact name disclosure requirement in section 315.5(b)(6) be eliminated because the verification process already anticipates that the prescriber has a means of direct communication with the seller.[200] The Commission declines to implement the requested change because the contact name disclosure requirement stems directly from section 4(c)(6) of the Act and the evidence in the record contains insufficient evidence to justify its elimination.

e. Selection of Communication Mechanism

A few State optometric associations recommended that prescribers be allowed to determine the communication mechanism that sellers must use to submit a verification request to the prescriber (*i.e.*, by telephone, fax or online).[201] Section 4(g) of the Act expressly defines "direct communication" as including three different communication mechanisms that sellers may use: telephone, facsimile or electronic mail.[202] The Act therefore does not permit prescribers to limit the communications mechanisms sellers may use to submit verification requests.[203]

3. 315.5(c)—Verification Events

Section 315.5(c) of the proposed Rule states that a "prescription is verified under paragraph (a)(2) of this section only if one of the following occurs: (1) the prescriber confirms the prescription is accurate by direct communication with the seller; (2) the prescriber informs the seller through direct communication that the prescription is inaccurate and provides the accurate prescription; or (3) the prescriber fails to communicate with the seller within eight (8) business hours after receiving from the seller the information described in paragraph (b) of this section."[204] This provision was derived from section 4(d) of the Act.[205] For the reasons discussed below, the Commission adopts this provision without modification in the final Rule.

Many prescribers either opposed or expressed significant concern about the passive verification system imposed by this section of the Rule.[206] A few prescribers' trade associations also expressed significant concern about the use of a passive verification system in connection with a restricted medical device such as contact lenses.[207] Because Congress has decided to impose a passive verification system through the Act, whether to adopt a passive verification system is not at issue in this rulemaking proceeding.

a. The Start of the Prescription Verification Period

A few prescribers' trade associations requested that the Commission clarify that, for purposes of section 315.5(c)(3), "eight business hours" begins when the prescriber receives a *complete* verification request from the seller.[208] In contrast, one seller argued that if a prescriber receives an incomplete verification request, the prescriber should be required to treat the request as an "inaccurate" one under section 315.5(d) of the Rule and should be required to provide the seller with corrected information within eight business hours.[209] Another seller commented that, as long as the verification request provides the prescriber sufficient information to locate the patient's record, the Rule should explicitly require the prescriber to provide the seller with the missing information from the prescriber's records.[210]

After reviewing these comments, the Commission has concluded that the prescription verification period begins when the prescriber receives a *complete* verification request. Section 4(d)(3) of the Act states clearly that a prescription

[197] California Optometric Association (Comment #1158).

[198] Smith/Eye Care of Ellensburg (Comment #12); G. Barker (Comment #125).

[199] National Association of Optometrists and Opticians (Comment #1146).

[200] Costco Wholesale Corporation (Comment #1061).

[201] Kansas Optometric Association (Comment #1153); New Mexico Optometric Association (Comment #1081); Ohio Optometric Association (Comment # 1151).

[202] 15 U.S.C. 7603(g).

[203] Nevertheless, nothing in the Act prohibits prescribers from informing sellers of their preferred mode of communication and nothing prohibits sellers from accommodating such requests.

[204] 69 FR at 5449.

[205] *See* 15 U.S.C. 7603(d).

[206] J. Rubin (Comment #699); N. Silverstein, M.D. and R. Silverstein, M.D. (Comment #930); J. Owen (Comment #154); Dr. J. Pingel (Comment #962); C.F. Ford, O.D. (Comment # 969); S. Renner, O.D. (Comment #850); J.L.Walters, O.D. (Comment #1109); Jackson & Baalman (Comment #1084); D. D'Alessandro (Comment #1138); M.Turner, O.D. (Comment #1106); A. Lee (Comment #1096); R. Purnell (Comment #1075); D.S. Dwyer, M.D. (Comment #1071); E. Goodlaw (Comment #18); M.Turner, O.D. (Comment #1058) (recommending that personal, non-automated call or mail from seller be required if seller does not hear from the provider to confirm that the provider received the verification request).

[207] AAO (Comment #1057); American Society for Cataract and Refractive Surgery (Comment #1148); Wisconsin Optometric Association (Comment # 1086).

[208] American Optometric Association (Comment #1149); National Association of Optometrists and Opticians (Comment #1146).

[209] Wal-Mart Optical Division (Comment #1070).

[210] 1–800 CONTACTS (Comment #1140).

is verified only if the prescriber fails to communicate with the seller within eight business hours "after receiving from the seller the information" required to be provided by the Act.[211] Thus, the eight-business-hour period to verify only begins to run when the seller provides *all* of the required information to the prescriber.

The Rule does not expressly require prescribers to notify sellers of incomplete requests. If the seller is not informed that a verification request is incomplete, however, a sale based on an expired, inaccurate or otherwise invalid prescription may occur after eight business hours. Because this may pose health risks to patients, the Commission encourages prescribers to inform sellers if they receive incomplete verification requests. In addition, the Commission notes that the Rule does not require prescribers to complete incomplete verification requests, but does not prohibit prescribers from doing so.

b. The Length of the Prescription Verification Period

Section 4(d)(3) of the Act states that the prescription verification period is "8 business hours or a similar time as defined by the Federal Trade Commission."[212] The Act therefore authorizes the Commission to impose a prescription verification period of either "eight business hours" or a "similar time." Section 315.5(c)(3) of the proposed Rule contained an "eight business hour" prescription verification period.[213] For the reasons set forth below, the Commission retains this provision in the final Rule and adds a requirement that, during the eight-business-hour period, sellers provide a "reasonable opportunity" for prescribers to communicate with sellers regarding verification requests.

Many commenters specifically addressed the length of the prescription verification period. For example, one seller indicated that the prescription verification period contained in section 315.5(c)(3) of the proposed Rule of eight business hours is too long, and recommended shortening it to five hours from the time the seller makes the verification request, and to two hours if a live agent of the seller is able to communicate with a live agent of the prescriber by telephone.[214] This commenter pointed out that California's prescription verification period (the earlier of 24 hours or 2 p.m. the next business day) is shorter than the verification period in the proposed Rule, and problems have not been reported in that State.

In addition, numerous consumers voiced their support for little or no delay in the shipping of contact lenses.[215] These consumers explained that their busy lives require the ease and convenience of immediate shipping.[216] A number of the consumers pointed out that quick or overnight shipments are especially important in emergency situations if contact lenses have been lost or torn.[217] Many consumers also commented that they oppose a delay period that prevents them from ordering contact lenses from their preferred sources.[218]

In contrast, numerous prescriber groups and individual prescribers argued that the prescription verification period in the proposed Rule should be extended because it is too short to account for prescribers' busy schedules, illness, multiple location practices, vacations, professional conferences, and/or other absences from the office.[219]

After reviewing the comments, the Commission has decided to retain the "eight business hour" standard in the final Rule. The "eight business hour" standard was taken directly from the Act, and the Commission has concluded that there is insufficient evidence in the record to justify a modification of the statutory standard.

The Commission recognizes that any verification period requires patients to wait to receive their contact lenses from non-prescriber sources. However, Congress expressly required the Commission to impose a verification period of "eight business hours or a similar time" in Section 4(d)(3) of the Act.

The Commission has decided not to implement a verification period shorter than the "eight business hour" period contained in the proposed Rule. The California standard, which is cited by one proponent of a shorter verification period, involves a verification period that may be as long as 24 hours or as short as approximately five business hours. The California experience therefore does not support the imposition of a blanket five-hour verification period, and, for the reasons discussed in detail above in the definition of "business hour" under section 315.2 of the Rule, the Commission has decided not to adopt the California approach. In addition, the Commission notes that the record contains no evidence to support the two-hour verification period proposed for situations in which a live agent of the seller is able to contact a live agent of the buyer. There is no reason to believe that a prescriber will be able (or should be required) to respond to a verification request more quickly simply because someone in the prescriber's office is able to answer the telephone when it rings.

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[211] 15 U.S.C. 7603(d)(3).

[212] 15 U.S.C. 7603(d)(3).

[213] *See* 69 FR at 5449.

[214] 1–800 CONTACTS (Comment #1140).

[215] *E.g.*, Comments #135, 136, 137, 138, 141, 142, 143, 144, 145, 146, 481, 575, 583, 596, 597, 623, 738.

[216] *E.g.*, Comments #144, 145, 385, 386, 409, 410, 419, 423, 424, 425, 427, 430, 438, 439, 442, 443, 445, 446, 450, 454, 456, 466, 467, 468, 471, 473, 474, 477, 479, 480, 484, 489, 532, 533, 536, 548, 550, 554, 557, 558, 560, 562, 565, 567, 569, 570, 579, 587, 589, 590, 592, 595, 598, 600, 601, 606, 609, 610, 611, 612, 613, 625, 626, 628, 629, 632, 633, 634, 641, 642, 649, 650, 652, 654, 655, 658, 659, 661, 662, 663, 672, 673, 675, 676, 678, 679, 680, 681, 685, 690, 693, 694, 695, 697, 701, 719, 759, 777, 786, 791, 809, 810, 826, 834, 845, 852, 871, 873, 877, 881, 882, 883, 885, 892, 895, 905, 907, 908, 909, 915, 916, 924, 927, 949, 953, 981, 986, 988, 1065, 1082, 1110, 1169, 1214, 1215, 1216, 1220, 1222, 1223, 1224, 1225, 1226, 1227, 1229, 1230, 1234.

[217] *E.g.*, Comments #140, 146, 388, 389, 390, 391, 393, 415, 421, 428, 433, 434, 444, 458, 460, 461, 475, 482, 526, 535, 541, 543, 545, 546, 564, 568, 578, 580, 581, 582, 585, 586, 591, 593, 594, 599, 621, 627, 628, 648, 688, 728, 731, 746, 749, 753, 782, 873, 888, 979, 1020, 1226.

[218] *E.g.*, Comments #142, 143, 431, 463, 555, 571, 602, 603, 604, 605, 616, 617, 620, 629, 631, 632, 633, 634, 635, 636, 638, 640, 641, 644, 645, 646, 647, 649, 670, 674, 680, 682, 685, 690, 691, 697, 709, 710, 726, 727, 731, 732, 746, 747, 748, 749, 750, 751, 753, 754, 755, 760, 763, 766, 777, 779, 782, 787, 788, 789, 799, 803, 825, 832, 835, 857, 858, 862, 866, 889, 901, 904, 911, 921, 957, 970, 979, 996, 1000, 1012, 1015, 1016, 1018, 1019, 1020, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1039, 1040, 1043, 1044, 1046, 1048, 1051, 1052, 1089, 1099, 1103, 1111, 1170, 1172, 1177, 1198, 1206, 1207.

[219] American Optometric Association (Comment #1149) (proposing a minimum of 12 business hours); Association of Regulatory Boards of Optometry (Comment #1154); Texas Optometric Association (Comment #977) (24 hours or actual prescriber business hours); American Society for Cataract and Refractive Surgery (Comment #1148); Illinois Optometric Association (Comment #1005) (48 hours); North Carolina State Optometric Society (Comment #1074) (24 or 16 business hours); E. Attaya (Comment #952); R. Scharfman, M.D. (Comment #890) (either more than an eight-hour response time or require seller to have secure 24-hour accessible means for receiving prescriber responses); Slusher (Comment #15) (16 hours); R. Graham (Comment #162); A. Henley (Comment #151); Wheaton Eye Clinic (Comment #416) (3 days); Morgantown Eye Associates, PLLC (Comment #925) (72 hours); Poindexter (Comment #260) (3 business days); K. Green (Comment #4) (six working days); S. Carpenter (Comment #182); B. Athwal (Comment #188) (one month); T. Vail (Comment #211); A.D. Dorfman, M.D. (Comment #304); S. Wexler, O.D. (Comment #375) (one day or three days); C. Lesko, M.D., FACS (Comment #960); D. Emrich, O.D. (Comment #973) (48 hours); Your Family Eye Doctors, Inc. (Comment #705) (24 hours); B.L.Whitesell, O.D. (Comment #1115); G. Lozada (Comment #1063) (24 hours, excluding weekends and holidays and making provisions for docs who are ill or out of town); O. Merdiuszew (Comment #1055); R. Purnell (Comment #1075); D.S. Dwyer, M.D. (Comment #1071); Jackson & Baalman (Comment #1084).

Moreover, as noted above, any alternative verification period must be "similar" to the eight-business-hour period contained in the Act.[220] The commenter's proposed five-hour/two-hour standard would result in a verification period which is significantly shorter than the eight-business-hour period contained in the Act. Consequently, the Commission has concluded that the commenter's suggested verification period is not sufficiently "similar" to the eight-business-hour period contained in the Act to warrant adoption.

The Commission also declines to implement a prescription verification period longer than "eight business hours" because the evidence in the record does not support such a change. As noted above in the discussion of the definition of "business hours" under section 315.2 of the Rule, survey evidence indicates that most prescribers' offices are open at least eight hours a day from Monday to Friday.[221] In addition, under the final Rule, Saturday hours will not count as part of the prescription verification period for those prescribers who are not regularly open for business on Saturdays. Several prescribers commented that a longer verification period would reduce their compliance burden under the Rule,[222] but they did not provide data demonstrating that prescribers will not be able to comply with the eight-business-hour verification period.

Moreover, as noted above, the Act requires that any alternative verification period be "similar" to the eight-business-hour period contained in the Act.[223] The commenters' suggested verification periods ranged from 12 business hours to one month.[224] Such verification periods would significantly exceed the eight-business-hour period contained in the Act. Consequently, the Commission has concluded that the commenters' proposed standards are not sufficiently "similar" to the eight-business-hour period contained in the Act to warrant adoption.

c. The Verification Process

Communication between prescribers and sellers forms the foundation for section 315.5(c) of the Rule. However, a number of prescribers' trade associations and individual prescribers commented that prescribers regularly have difficulty communicating with sellers because sellers' telephone and fax lines are busy.[225] Several of these commenters recommended that the Rule expressly require sellers to maintain sufficient telephone and fax lines to communicate with prescribers.[226] A few commenters further requested that sellers be required to provide toll-free telephone and fax lines to receive communications from prescribers, although one seller argued against such a requirement.[227]

The Act implies that prescribers will have an opportunity to respond to verification requests. The Commission declines to articulate with specificity the equipment or personnel that sellers must have to handle verification requests, so that they will have flexibility in determining the most effective and efficient means of providing this opportunity.[228] Instead, the final Rule mandates that sellers provide prescribers a "reasonable opportunity" for the prescriber to communicate with the seller regarding such requests.[229]

Several prescriber trade associations and at least one prescriber suggested that prescribers be allowed to respond to a verification request by submitting a copy of the patient's prescription to the seller.[230] The Commission agrees that the prescriber may provide the seller with a copy of the actual prescription in response to a verification request. However, to be considered a valid response to a verification request, the prescription must include all of the information necessary to correct any inaccuracies contained in the verification request, as required by section 315.5(d) of the Rule.

One prescriber suggested that a national database of contact lens prescriptions be created to allow prescribers and sellers to communicate.[231] The creation of such a database is beyond the mandate of the Act.

d. Pre-Verification Obligations

Several State optometric associations suggested that patients should be required to certify that they have had an eye examination in the past one or two years or, alternatively, should be asked by the seller if they have had an eye exam in the past one or two years.[232] The Act does not impose either a certification obligation on patients or a notification obligation on sellers. Moreover, the evidence in the record is not sufficient to determine whether such requirements would benefit consumers. The Commission therefore declines to include such requirements in the final Rule.

e. Post-Verification Obligations

A significant number of prescriber trade associations and individual prescribers suggested that the Rule be modified to require sellers to notify prescribers when the seller fills a patient's contact lens order and to include in that notification the quantity of contact lenses it supplied to the patient.[233] Some commenters pointed

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[220] *See* 15 U.S.C. 7603(d)(3).

[221] 1–800 CONTACTS, Inc. (Comment #1140).

[222] *See, e.g.*, A. Henley (Comment #151); T. Vail (Comment #211); C. Lesko, M.D., FACS (Comment #960); Your Family Eye Doctors, Inc. (Comment #705).

[223] *See* 15 U.S.C. 7603(d)(3).

[224] *E.g.* American Optometric Association (Comment #1149) (proposing a minimum of 12 business hours); B. Athwal (Comment #188) (suggesting one month).

[225] National Association of Optometrists and Opticians (Comment #1146); American Optometric Association (Comment #1149); Kansas Board of Examiners in Optometry (Comment #1007); Kentucky Optometric Association (Comment #1101); Ohio Optometric Association (Comment #1151); Pennsylvania Optometric Association (Comment #959); P. Suscavage (Comment #20); D. Deeds (Comment #13); T. Vail (Comment #211); W. West (Comment #126); W.G. Wilde, O.D., P.C. (Comment #284); C.J. Jensen, O.D., F.A.A.O. (Comment #305).

[226] *E.g.*, National Association of Optometrists and Opticians (Comment #1146); American Optometric Association (Comment #1149); Kansas Board of Examiners in Optometry (Comment #1007); Kentucky Optometric Association (Comment #1101); Ohio Optometric Association (Comment #1151) (recommending that 90% of first time calls should not reach a busy signal and that sellers provide evidence of adequate communications access to the Commission through periodic phone/Internet provider audit confirmation); Wheaton Eye Clinic (Comment #416).

[227] *E.g.*, Kentucky Optometric Association (Comment #1101) (in favor of toll-free lines); W. West (Comment #126) (in favor of toll-free lines); Wal-Mart Optical Division (Comment #1070) (against toll-free lines).

[228] Some other consumer protection statutes that the Commission enforces expressly address the issue of how a business must respond to requests. *E.g.*, Fair Credit Reporting Act, 15 U.S.C. 1581g(c)(1)(B) (requiring nationwide consumer reporting agencies to provide "a toll-free telephone number established by the agency at which personnel are accessible to consumers during normal business hours").

[229] Moreover, nothing in the Act or Rule prohibits sellers from establishing toll-free lines to facilitate communications with prescribers.

[230] Kansas Optometric Association (Comment #1153); New Mexico Optometric Assoc (Comment #1081); Ohio Optometric Association (Comment #1151); J.B. Rogers, O.D. (Comment #1119).

[231] K. Poindexter (Comment #260).

[232] Kansas Optometric Association (Comment #1153); New Mexico Optometric Association (Comment #1081); Arizona Optometric Association (Comment #1072); Ohio Optometric Association (Comment #1151).

[233] American Optometric Association (Comment #1149); Nebraska Optometric Association (Comment #1083); New York State Optometric Association (Comment #1073); Oklahoma Assoc of Optometric Physicians (Comment #1125); Kansas Optometric Association (Comment #1153); New Mexico Optometric Association (Comment #1081); Kentucky Optometric Association (Comment #1101); Arizona Optometric Association. (Comment #1072); Ohio Optometric Association (Comment #1151); K. Driver, O.D. (Comment #273); C. Lesko,

Continued

out that such notification would be especially important for orders verified under the passive verification mechanism.[234] The commenters argued that, without notification, a patient may be able to evade the prescription's expiration date by ordering from multiple sellers[235] or by ordering more refills than allowed by the prescription.[236] A few prescribers suggested that the seller be required to notify the patient when the patient's contact lens prescription is filled via passive verification,[237] and one State optometry board suggested that the seller be required to notify the patient if the prescriber refuses to verify a prescription.[238]

In contrast to the prescribers, sellers argued that any attempt by prescribers to limit the quantity of contact lenses supplied to patients under a current prescription would be unwarranted under the Act.[239] An academic ophthalmologist commented that, if quantity limits are imposed, patients who tear or lose their lenses or who have to replace lenses more frequently may have prescriptions that run out before they expire.[240] One seller also pointed out that patients may choose to replace lenses more frequently than recommended by their prescriber, and that such choices may be potentially healthier for patients.[241]

After reviewing the comments, the Commission has decided not to require contact lens sellers to notify prescribers or patients when contact lenses are supplied to patients or when a prescriber refuses to verify a prescription. The Act does not impose such notification requirements. Moreover, although the Act creates a prescription release and verification system for contact lenses, it does not impose any post-verification obligations (other than recordkeeping requirements) on sellers, prescribers, or patients. Consequently, the Commission has concluded that the imposition of the suggested post-verification notification obligation upon sellers would be beyond the mandate of the Act.

One seller commented that if passive verification has occurred under section 315.5(c)(3) of the Rule and the seller does not know the prescription expiration date,[242] the seller should presume that the prescription is valid for only 30 days and supply lenses accordingly.[243] The Commission has concluded that such a 30-day presumed expiration date falls outside the mandate of the Act. The Act creates a regulatory regime which, aside from recordkeeping obligations, ends once passive verification has occurred. Although the Act does not require sellers to presume such a 30-day expiration date, it also does not prohibit them from doing so.

One State optometry board recommended that the seller be prohibited from shipping contact lenses or shipping additional contact lenses to a patient if the prescriber notifies the seller that the prescription is inaccurate, invalid or expired after the eight-business-hour period has passed.[244] One seller similarly recommended that the seller be required to notify the patient and permit the patient to return the unused lenses to the seller if the prescriber's negative response is received after the eight-business-hour period has passed.[245] The Commission believes that, aside from recordkeeping obligations, the statutory regime imposed by the Act ends when the eight-business-hour period has passed. Consequently, the requested changes fall outside the requirements of the Act. Nevertheless, the Commission notes that nothing in the statute or the Rule prohibits a prescriber from submitting such notifications to the seller or the seller from acting upon such notifications. It would likely be in the best interest of their common customer, the patient, for them to do so.

One prescribers' trade association recommended that a seller be required to document that a prescriber is licensed whenever it fills a prescription via passive verification.[246] The commenter indicated that such a requirement would prevent patients from using fictional prescriber contact information to obtain contact lenses through passive verification. The Act does not impose such a requirement. Furthermore, the Commission notes that the record does not contain any data regarding patients' submission of fictional prescriber contact information to sellers. Absent such information, the Commission cannot determine whether the license verification obligation suggested would benefit consumers. The Commission thus has not included a license verification requirement in the final Rule.

Another prescribers' trade association recommended that sellers provide a written message ["Warning: If you are having any of the following symptoms, remove your contact lenses immediately and consult your eye care practitioner before wearing your lenses again: unexplained eye discomfort, watering, vision change or redness."] whenever lenses are supplied to a patient.[247] The commenter pointed out that its State law imposes such a notification requirement. Because the Act does not require such a warning, and the record does not contain sufficient evidence to determine whether such a requirement would benefit consumers, the Commission has not included such a requirement in the final Rule. Nevertheless, except as discussed below in the preemption section, the Commission notes that the Act does not alter the obligation to comply with applicable State law.

f. The Verification Process and HIPAA

In the NPRM, the Commission asked whether the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")[248] limits or otherwise affects prescribers" ability to respond to a verification request under the Act.[249] Among other things, HIPAA and its implementing Privacy Rule (entitled "Standards for Privacy of Individually

M.D., FACS (Comment #960); Olathe Family Vision (Comment #971); S. Bryant, O.D. (Comment #1127); R. Jackson (O.D. (Comment #963); G. Lozada (Comment #1063); M. Turner, O.D. (Comment #1058); Jackson & Baalman (Comment #1084); S.J. St. Marie, O.D. (Comment #1121); J. B. Rogers, O.D. (Comment #1119) (prescriber should be notified of all passive verification sales); S. Carpenter (Comment #182); W. Vietti, O.D. (Comment #127).

[234] *E.g.*, Nebraska Optometric Association (Comment #1083); New Mexico Optometric Assoc (Comment #1081); Ohio Optometric Association (Comment #1151); C. Lesko, M.D., FACS (Comment #960); M. Turner, O.D. (Comment #1058); J.B. Rogers, O.D. (Comment #1119).

[235] *E.g.*, American Optometric Association (Comment #1149); Nebraska Optometric Association (Comment #1083); New York State Optometric Assoc (Comment #1073); S.J. St. Marie, O.D. (Comment #1121). Several additional commenters did not propose a refill notification mechanism, but expressed concern about patients who order from multiple sellers in order to evade expiration dates and other prescription limitations. *E.g.*, E. Attaya (Comment #952); M. Dean (Comment #457); D. Howard, O.D. (Comment #987); Your Family Eye Doctors, Inc. (Comment #705); A. Lee (Comment #1096).

[236] *E.g.*, Nebraska Optometric Association (Comment #1083); K. Driver, O.D. (Comment #273).

[237] D. Pao (Comment #139); E. Lamp, O.D. (Comment #174).

[238] Kansas Board of Examiners in Optometry (Comment #1007).

[239] AC Lens (Comment #974); William F. Shughart, II, Ph.D., on behalf of 1–800–CONTACTS (Comment #975).

[240] P.S. D'Arienzo, M.D. (Comment #1056).

[241] AC Lens (Comment #974); P.S. D'Arienzo, M.D. (Comment #1056).

[242] Although passive verification cannot occur if the verification request is incomplete, neither the Act nor the final Rule requires sellers to include an expiration date in such a request. *See* 15 U.S.C. 7603(c); Section 315.5(b) of final Rule.

[243] Wal-Mart Optical Division (Comment #1070).

[244] Kansas Board of Examiners in Optometry (Comment #1007).

[245] 1–800 CONTACTS (Comment #1140).

[246] Texas Ophthalmological Association (Comment #1117).

[247] Kentucky Optometric Association (Comment #1101).

[248] Pub. L. 104–191 (Aug. 21, 1996).

[249] *See* 69 FR at 5447.

Identifiable Health Information")[250] limit the circumstances under which a covered entity may disclose individually identifiable health information without prior written authorization from the patient. The Act itself did not expressly address HIPAA, but the Commission sought comment on the issue because verification of a patient's contact lens prescription information may entail the disclosure of individually identifiable health information protected by the Privacy Rule.

The majority of the commenters on this question agreed that the Privacy Rule permits eye care providers to provide contact lens prescription verification information to an authorized third-party seller without the patient's written authorization.[251]

One commenter noted that the preamble to the HIPAA Privacy Rule specifically indicates that disclosure of protected health information by an eye doctor to a distributor of contact lenses for the purpose of confirming a contact lens prescription is considered "treatment," and Section 164.506 of the HIPAA Privacy Rule permits disclosure under such circumstances.[252] Another commenter recommended that the Commission include language in the final Rule clarifying that contact lens sellers are "health care providers" under the Privacy Rule when selling or dispensing lenses pursuant to a prescription, and thus the "treatment" provision permits prescribers to verify prescription information to such sellers.[253]

A few commenters disagreed, stating that a prescription verification request should be accompanied by a signed authorization from the patient to release the medical information.[254]

The Commission does not believe that the HIPAA Privacy Rule limits prescribers' ability to verify contact lens prescriptions under the Contact Lens Rule. First, the HIPAA Privacy Rule permits a "covered entity" to use or disclose protected health information without patient authorization "for treatment, payment, or health care operations."[255] Providing, confirming or correcting a prescription for contact lenses to a seller designated by the patient constitutes "treatment" under the Privacy Rule.[256] Second, the HIPAA Privacy Rule allows "covered entities" to use or disclose protected health information without patient authorization if the use or disclosure is "required by law."[257] To the extent the disclosure of protected health information needed to provide, confirm, or verify a contact lens prescription is required under the Act and the Rule, such disclosure constitutes a disclosure required by law under the HIPAA Privacy Rule.[258] Accordingly, the Commission does not believe it needs to revise the proposed Rule to address HIPAA-related issues.

4. 315.5(d)—Invalid Prescription

Section 315.5(d) of the proposed Rule states that if "a prescriber informs a seller before the deadline under paragraph (c)(3) of this section that the contact lens prescription is inaccurate, expired, or otherwise invalid, the seller shall not fill the prescription. The prescriber shall specify the basis for the inaccuracy or invalidity of the prescription. If the prescription communicated by the seller to the prescriber is inaccurate, the prescriber shall correct it, and the prescription shall then be deemed verified under paragraph (c)(2) of this section."[259] This provision was derived from Section 4(e) of the Act.[260] For the reasons discussed below, the Commission adopts this provision without modification in the final Rule.

a. Inaccurate Prescriptions

If some of the information on a verification request is incorrect, but can be corrected, the prescription is "inaccurate" for purposes of section 315.5(d) of the Rule. Several commenters addressed the issue of inaccurate prescriptions. A few State optometric associations requested that the eight-business-hour prescription verification period be extended or treated as a new request when a prescriber notifies the seller that a correction is required.[261] In contrast, one seller indicated that the Rule should expressly state that a prescriber must provide accurate prescription information at the same time that the prescriber informs the seller that the prescription is inaccurate.[262] After reviewing the comments, the Commission has concluded that the prescriber must provide the correct information at the same time that the prescriber informs the seller that the prescription is inaccurate. Nothing in the Act indicates that Congress intended to extend the prescription verification period (including triggering a new eight-business-hour period) if the prescriber has determined that a prescription is inaccurate.

One State optometric association suggested that sellers be required to verify receipt of corrections submitted by prescribers.[263] The Commission declines to make the requested change because nothing in the Act contemplates the imposition of such a notification requirement on sellers.

The Commission also has concluded that the quantity ordered may be a legitimate basis for a prescriber to treat a request for verification of a prescription as "inaccurate," because Congress indicated in section 4(c) of the Act that the quantity of lenses ordered is relevant information by requiring sellers to include the quantity ordered in prescription verification requests.[264] For example, if a verification request indicates that a patient seeks to purchase a nine-month supply of lenses only one month before the prescription expires, the prescriber may treat the

[250] 45 CFR Parts 160, 164.

[251] *E.g.*, AC Lens (Comment #974); American Academy of Ophthalmology (Comment #1057); Wal-Mart Optical Division (Comment #1070); 1–800 CONTACTS (Comment #1140); American Society for Cataract and Refractive Surgery (Comment #1148).

[252] American Society for Cataract and Refractive Surgery (Comment #1148) (citing preamble to HIPAA Privacy Rule, 67 FR 53219 (Aug. 14, 2002)). *See also* AC Lens (Comment #974) (stating disclosure of prescription information is permitted as "treatment" under 45 CFR 164.506); 1–800 CONTACTS (Comment #1140) (same).

[253] American Academy of Ophthalmology (Comment #1057). This commenter also urged the Commission to examine HIPAA's small business exemptions to determine whether they are applicable to the proposed rule or in conflict with it. The Commission is not aware of any such exemptions.

[254] Tupelo Eye Clinic (Comment #11); S. Carpenter (Comment #182); D. Dwyer, M.D. (Comment #275); Association of Regulatory Boards of Optometry (Comment #1154).

[255] *See* 45 CFR 164.506.

[256] *See* 67 FR 53219 (Aug. 14, 2002). See also the FAQ on the HHS Office for Civil Rights HIPAA Privacy Web site at *http://www.hhs.gov/ocr/hipaa*, entitled "Does the HIPAA Privacy Rule permit an eye doctor to confirm a contact [lens] prescription received by a mail-order contact company?" (Answer ID #270). Answer: "Yes. The disclosure of protected health information by an eye doctor to a distributor of contact lenses for the purpose of confirming a contact lens prescription is a treatment disclosure, and is permitted under the Privacy Rule at 45 CFR 164.506."

[257] *See* 45 CFR 164.512(a).

[258] For example, a prescriber is required by the Act and Rule to provide a contact lens prescription to a designated contact lens seller. *See* 15 U.S.C. 7601(a)(2); 16 CFR 315.3(a)(2). In addition, a prescriber who responds to a seller's prescription verification request and states that the prescription information is inaccurate must provide the correct information. *See* 15 U.S.C. 7603(e); 16 CFR 315.5(d).

[259] 69 FR at 5449.

[260] *See* 15 U.S.C. 7603(e).

[261] Ohio Optometric Association (Comment # 1151); Kansas Optometric Association (Comment #1153); New Mexico Optometric Association (Comment #1081).

[262] Wal-Mart Optical Division (Comment #1070).

[263] Nebraska Optometric Association (Comment #1083).

[264] *See* 15 U.S.C. 7603(c)(3).

verification request as inaccurate. Under such circumstances, the prescriber would be required to provide the seller with information regarding the basis for the inaccuracy as well as to correct the prescription by specifying an appropriate number of lenses to be dispensed.[265]

b. Expired Prescriptions

If a seller seeks verification of a prescription for which the expiration date has passed, the prescription is "expired" for purposes of section 315.5(d) of the Rule. Numerous commenters addressed prescribers' obligations with respect to expired prescriptions. One seller recommended that the Rule explicitly require prescribers to provide sellers the examination date and prescription issue date when reporting that a prescription has expired.[266] This seller was concerned that, without such an obligation, prescribers may use the "expired" option to avoid complying with prescription verification obligations. Numerous prescriber groups and prescribers, in contrast, commented that sellers are either not honoring prescribers' responses that a prescription is expired or are not honoring such responses unless the prescriber provides additional information regarding the expired prescription.[267]

The Commission has concluded that prescribers should be allowed to respond that a prescription is "expired" without providing additional information to the seller. Section 4(e) of the Act establishes three categories of invalid prescriptions (*i.e.*, inaccurate, expired, and otherwise invalid).[268] Section 4(e) then requires prescribers to "specify the basis for the inaccuracy or invalidity" only if a particular prescription is designated as inaccurate or invalid.[269] The Act does not impose a similar additional information requirement for expired prescriptions. Consequently, the Commission has decided not to require prescribers to provide additional information, such as the examination date or the prescription issue date, when they respond that a prescription is expired, although they may choose to do so.[270]

A number of prescribers indicated that a prescription should be deemed expired for purposes of section 315.5(d) of the Rule when the prescribed number of refills has been filled.[271] For the reasons provided above in the discussion of "inaccurate" prescriptions, the Commission has concluded that prescribers may treat a verification request as "inaccurate" rather than as "expired" based on the relationship between the quantity of lenses ordered (as indicated in the verification request) and the expiration date of the prescription. In such situations, the prescriber must provide corrected information to the seller as to the quantity of lenses that may be ordered under an accurate verification request.

c. Invalid Prescriptions

An "otherwise invalid" prescription under section 315.5(d) of the Rule includes, for example, situations where the verification request does not contain sufficient information to allow the prescriber to identify the patient, identifies a person who is not the prescriber's patient, or identifies a patient who has developed a medical condition which prohibits the use of contact lenses.

One seller requested that the Commission expressly define an invalid prescription as one that has expired or does not apply to the buyer.[272] The seller argued that prescribers should not be able to define "invalid" in a subjective manner, and that the prescriber's burden to correct an invalid prescription should be the same as the prescriber's burden to correct an inaccurate prescription. The Commission declines to make the requested changes because Section 4(e) of the Act clearly identifies three categories of invalid prescriptions (inaccurate, expired, and otherwise invalid) with different obligations imposed on prescribers for each category.[273] The Commission notes, however, that section 315.5(d) of the final Rule requires a prescriber who designates a prescription as invalid to specify the basis for the invalidity.

d. Multiple Verification Requests

Several prescriber trade associations and prescribers stated that prescribers regularly receive multiple verification requests for the same patient from a seller, even after the prescriber has responded to the original verification request.[274] Some trade associations specifically recommended that the Commission sanction sellers who submit multiple or frivolous verification requests.[275] Under the Act and the Rule, a seller may send one verification request via direct communication to the prescriber.[276] Unless a subsequent request contains additional or revised information, a seller may not resend another verification request to the prescriber.

5. 315.5(e)—No Alteration of Prescription

Section 315.5(e) of the proposed Rule prohibits the alteration of prescriptions by stating that a "seller may not alter a contact lens prescription. Notwithstanding the preceding sentence, a seller may substitute for private label contact lenses specified on a prescription identical contact lenses that the same company manufactures and sells under different labels."[277] This provision is derived from section 4(f) of the Act,[278] and the Commission has decided to adopt the proposed provision without modification in the final Rule.

A number of prescribers and prescriber trade associations

[265] A few prescribers commented that they are amenable to such an approach. M. Walker (Comment #165) (would like the right to limit the number of boxes prescribed to the time remaining on the prescription before expiration); D. Hughes (Comment #712) (prescriber should be allowed to approve a verification request but limit the number of boxes consistent with the prescription expiration date).

[266] 1–800 CONTACTS (Comment #1140).

[267] American Academy of Ophthalmology (Comment #1057); National Association of Optometrists and Opticians (Comment #1146); Wisconsin Optometric Association (Comment #1086); P. Butler (Comment #730); Pennsylvania Optometric Association (Comment #959); F. Aulicino (Comment #167); Family Vision Care (Comments ##130, 397); T. Pierzchala (Comment #243); K.S. Aldridge, DO (Comment #1106); M. Malone (Comment #1123); Low Country Vision Center (Comment ##406, 1183); T. Copelovitch (Comment #214); D. Ball (Comment #849); D. Tabak (Comment #23); M. Spittler (Comment #158).

[268] *See* 15 U.S.C. 7603(e).

[269] *Ibid.*

[270] When a prescriber responds to a verification request by indicating that a patient's prescription has "expired," the seller may not ship lenses to that patient.

[271] New York State Optometric Association (Comment #1073); Oklahoma Association of Optometric Physicians (Comment #1125); Kansas Optometric Association (Comment #1153); New Mexico Optometric Association (Comment #1081); M. Dean (Comment #457).

[272] Wal-Mart Optical Division (Comment #1070).

[273] *See* 15 U.S.C. 7603(e).

[274] American Optometric Association (Comment #1149); National Association of Optometrists and Opticians (Comment #1146); Nebraska Optometric Association (Comment #1083); Illinois Optometric Association (Comment #1005); Pennsylvania Optometric Association (Comment #959); M. Onyon (Comment #161); H.G. Schneider, M.D. (Comment #1006); E. Attaya (Comment #952); Silverdale Eyecare Center (Comment #1054) (recommending that seller not be allowed to make multiple verification requests without confirming the prescriber's information with the patient ordering the lenses); Jackson & Baalman (Comment #1084).

[275] American Optometric Association (Comment #1149); Illinois Optometric Association (Comment #1005).

[276] If the verification request does not meet the "direct communication" standard set forth in section 315.2 of the Rule because the communication was not completed, the seller may resend the verification request.

[277] 69 FR at 5449.

[278] *See* 15 U.S.C. 7603(f).

commented that sellers have been providing patients with lenses that are substantially different from the ones prescribed by the prescriber.[279] Some commenters provided anecdotal examples in which sellers altered patients' prescriptions by supplying patients with tinted lenses, generic lenses or extended wear lenses even though such lenses had not been prescribed for the patient's use.[280] The Commission notes that section 315.5(e) of the Rule expressly prohibits sellers from substituting contact lenses unless the substitution involves the replacement of private label lenses with identical lenses made by the same manufacturer but sold under the labels of other sellers.[281]

One seller commented that the Act is based on the assumption that sellers can easily obtain equivalent national brands for private label lenses, but, the seller argued, this assumption is incorrect.[282] According to the seller, manufacturers have cut off entities who supply such lenses to alternative sellers. The seller suggested that the Rule require prescribers who prescribe private label brands to include on the prescription the name of a brand sold directly to alternative sellers. Nothing in the Act contemplates the imposition of such a disclosure requirement on prescribers.

6. 315.5(f)—Recordkeeping for Verification Requests

In accordance with the Act,[283] section 315.5(f) of the proposed Rule would require sellers to maintain, for a period of at least three years, records of all direct communications relating to prescription verification, as well as any prescriptions they receive from patients or prescribers.[284] As stated in the NPRM, the purpose of these recordkeeping requirements is to allow the Commission to investigate whether there has been a rule violation and to seek civil penalties for any such violations.[285] The Commission has slightly revised this provision as discussed below.

a. Copies of Prescriptions

Paragraph 315.5(f)(1) of the proposed Rule would require that sellers keep copies of prescriptions (including an e-mail containing a digital image of the prescription) or fax copies of prescriptions they receive directly from a patient or a prescriber.[286] The Commission received no comments on this provision, and adopts it without modification in the final Rule.

b. Documentation of Verification Requests

Paragraphs 315.5(f)(2) and (3) of the proposed Rule specified the documentation sellers would have to maintain relating to verification requests.[287] The required recordkeeping would vary based on the means of direct communication used by the seller or prescriber. If a seller communicates through facsimile or e-mail, it would have to maintain a copy of the verification request and a confirmation of the completed communication of that request. If the seller communicates through telephone, it would have to maintain a telephone log describing the information that the seller provided to the prescriber (*e.g.*, noting that the seller read the required prescription information to the prescriber); recording the date and time the telephone call was completed; and indicating how the call was completed (*e.g.*, by speaking with someone directly (and if so whom) or by leaving a message).[288] In addition, for communications by telephone, the seller would have to retain copies of its telephone bills.[289] Required records of communications from prescribers would be similar.[290]

The Commission received several comments on its proposed recordkeeping provision. Some commenters agreed with the provision generally.[291] Some commenters suggested the Rule also require, for telephone communications, the name of the person at the prescriber's office with whom the seller spoke, as well as the person calling on behalf of the seller.[292] Two sellers suggested eliminating the requirement that they preserve telephone bills, arguing that the requirement is burdensome and the bills can be obtained from the telephone company if necessary.[293] Also, two commenters requested that the Rule allow the seller to keep the required telephone logs in electronic format.[294] Finally, some commenters sought clarification of what constitutes the required confirmation of a completed verification request.[295]

Having considered the comments, the Commission has revised the proposed Rule to: (1) Require records of telephone communications to include the names of the individuals who participated in the call; (2) eliminate the requirement that sellers retain telephone bills; and (3) permit electronic storage of logs and other records. The Commission believes these revisions will further the recordkeeping requirements' purpose of facilitating investigation of whether a rule violation has occurred, and also reduce the burden on sellers of maintaining documents.

7. 315.5(g)—Recordkeeping for Saturday Business Hours

As set forth above in the Commission's discussion of the

[279] American Optometric Association (Comment #1149); Kansas Optometric Association (Comment #1153); Wheaton Eye Clinic (Comment #416); P. Beale, O.D. (Comment #1090, 1064); M. Malone (Comment #1123); D.K. Boltz (Comment #175).

[280] *E.g.*, Wheaton Eye Clinic (Comment #416) (tinted lenses); P. Beale, O.D., FAAO (Comment #1090, 1064) (generic lenses); D. K. Boltz (Comment #175) (switching patient from daily wear to extended wear lenses). In comparison, however, one State optometric association pointed out that its State law allows sellers to change the color of a contact lens without penalty, and noted that the experience in that State has not resulted in any problems. California Optometric Association (Comment # 1158).

[281] Some prescribers suggested that sellers be prohibited from supplying a brand of lens other than the one prescribed by the seller. *E.g.*, D.L. Rodrigue (Comment #1102); B.L.Whitesell, O.D. (Comment #1115); A. Lee (Comment #1096); M. Malone (Comment #1123). The Commission notes that Section 4(f) of the Act, 15 U.S.C. 7603(f), expressly exempts private label lenses from the general ban on contact lens substitutions. If a seller's substitution of one lens brand for another lens brand qualifies as a private label substitution under the Rule, the substitution would not violate the Rule's requirements.

[282] 1–800 CONTACTS (Comment #1140).

[283] *See* 15 U.S.C. 7603(b).

[284] 69 FR at 5449.

[285] 69 FR at 5442.

[286] *See* 69 FR at 5449.

[287] *See* 69 FR at 5449.

[288] *See* 69 FR at 5443, 5449.

[289] *See* 69 FR at 5443.

[290] Section 315.5(f)(3) of the proposed Rule would require a seller to maintain a copy of any fax or e-mail communication from a prescriber, and a record of the time and date it was received; for a telephone communication, the seller would maintain a telephone log describing the information communicated and the date and time it was received.

[291] *E.g.*, AC Lens (Comment #974) (recordkeeping requirements are reasonable); Kansas Board of Examiners in Optometry (Comment #1007) (preservation of confirmation that a facsimile or e-mail communication was successful will be crucial for enforcement: "Because the seller will be entrusted with determining when the eight business hour period expires, it is important the seller have verification the request has been received."); K. Poindexter (Comment #260) (seller should have to keep copies of all verification requests sent).

[292] *E.g.*, American Optometric Association (Comment #1149); Kansas Board of Examiners in Optometry (Comment #1007) (names of person(s) involved in the communication is key for investigating complaints and will foster accountability).

[293] Costco Wholesale Corporation (Comment #1061); Wal-Mart Optical Division (Comment #1070).

[294] Wal-Mart Optical Division (Comment #1070); AC Lens (Comment #974).

[295] *E.g.*, K. Poindexter (Comment #260); *see also* Wal-Mart Optical Division (Comment #1070) (for e-mails, saving the e-mail should be sufficient; seller should not have to verify that e-mail was received but should save notice of nondelivery if received). The Commission has addressed this issue in its discussion of the definition of "direct communication" elsewhere in this notice.

definition of "business hour," the final Rule gives contact lens sellers the option to include a prescriber's regular Saturday business hours in the eight-hour verification period, if the seller has actual knowledge of those hours. In addition, the final Rule incorporates a new provision—section 315.5(g)—which requires that a seller exercising this option must maintain a record of the prescriber's regular Saturday business hours and the basis for the seller's actual knowledge thereof—*i.e.*, how the seller determined the hours. This new provision is intended to ensure that sellers have a sound basis for their actual knowledge, and to facilitate review by the Commission of seller's practices in using Saturday business hours for prescription verification.[296]

F. Section 315.6: Expiration of Contact Lens Prescriptions

Section 315.6 of the Commission's proposed Rule addresses expiration dates for contact lens prescriptions and closely tracks the requirements set forth in the Act.[297] Specifically, the proposed Rule provides that a contact lens prescription expires: (1) On the date specified by State law, if that date is one year or more after the issue date of the prescription; (2) not less than one year after the issue date if the expiration date under State law is less than one year after its issue date, or the State law does not specify an expiration date; or (3) on a different expiration date based on a prescriber's medical judgment with respect to the ocular health of the particular patient. If a prescriber specifies an expiration date of less than one year from the issue date, the prescriber must document the relevant medical reasons in the patient's medical record with sufficient detail to allow a qualified medical professional to determine the reasonableness of the shorter expiration date, and must retain such documentation for at least three years. As noted in the NPRM, the purpose of establishing a minimum expiration date as a matter of Federal law is to prevent prescribers from selecting a short expiration date for a prescription that unduly limits the ability of consumers to purchase contact lenses from other sellers, unless legitimate medical reasons justify setting such an expiration date.[298]

The Commission received several comments on this provision of the proposed Rule. For the reasons set forth below, the Commission has retained this provision as originally proposed.

1. One Year Minimum Expiration Period

With respect to the general rule that a prescription shall expire not less than one year after its issue date, some commenters agreed with the minimum and wanted State laws specifying short expiration periods to be preempted.[299] Other commenters stated that the minimum expiration date should be extended to two years rather than one,[300] while another commenter asked the Commission to strike "not less than" and thereby set a definitive expiration date of one year.[301] Based on the Act, the Commission concludes that Congress intended to defer to applicable state law except where such law establishes an expiration period of less than one year.

2. Medical Judgment for an Expiration Date of Less Than One Year

In its NPRM, the Commission specifically sought comment on what circumstances would provide a legitimate medical reason for setting an expiration date of less than one year.[302] Commenters cited circumstances including neovascularization of the cornea, hypoxia, diabetes, corneal degenerations (*i.e.*, keratoconus), history of frequent conjunctivitis, history of non-compliance with wearing schedules, and new contact lens wearers.[303] The Commission's Rule is premised on the expectation that prescribers will use applicable standards of care in determining whether medical reasons necessitate a prescription expiration period of less than one year.

The Commission received several other comments relating to the "medical judgment" exception. One commenter urged the Commission to recognize that setting a prescription expiration date of less than one year should occur "only in exceptional circumstances."[304] Based on the express language of the Act,[305] the Commission concludes that Congress intended to establish a general rule governing prescription expiration—namely, State law or one year from issue date, whichever is longer—and to provide an exception to that general rule to allow for cases in which a shorter expiration date is medically necessary. As such, the Commission anticipates that prescriptions shorter than one year in fact will be the exception, not the rule.

With respect to prescriptions of less than one year, section 315.6(b) of the proposed Rule would require prescribers to document the medical reasons "with sufficient detail to allow for review by a qualified professional in the field." One commenter asked the Commission to clarify the applicable standard of review.[306] The Commission anticipates that such review would be conducted by a qualified professional comparable to the prescriber, such as an ophthalmologist reviewing documentation created by an ophthalmologist. The Commission does not believe it is necessary to further define the term.

G. Section 315.7: Content of Advertisements and Other Representations

Section 315.7 of the proposed Rule would prohibit any person that engages in the manufacture, processing, assembly, sale, offering for sale, or distribution of contact lenses from representing, by advertisement, sales presentation, or otherwise, that contact lenses may be obtained without a prescription.[307] This provision was taken verbatim from the Act.[308] The Commission did not receive any comments directly addressing this prohibition, and the Commission adopts it without modification in the final Rule.

Several commenters, primarily prescribers and some of their trade

[296] This optional recordkeeping requirement is not a substantive or material modification to the collection of information that the Office of Management and Budget has approved under the Paperwork Reduction Act. *See* 5 CFR 1320.5(g). Moreover, the Commission believes that only a few contact lens sellers will use the option of including a prescriber's regular Saturday hours in the eight hour verification period. Therefore, any increase in burden under the PRA will not be significant, and in any event would be offset by the decrease in burden that results from the changes in the recordkeeping requirements that are applicable to all sellers.

[297] *See* 69 FR at 5449–5450; 15 U.S.C. 7604.

[298] 69 FR at 5443.

[299] *E.g.*, Wal-Mart Optical Division (Comment #1070).

[300] S. Cutter (Comment #184) (one year is too short); R.Weigner (Comment #1118) (HMOs pay for eye exams every two years).

[301] K. Green (Comment #4) (stating that the standard of care calls for an annual contact lens follow-up exam—or less if medically indicated—and that the Commission should not dictate medical standard of care).

[302] 69 FR at 5448.

[303] American Optometric Association (Comment #1149); K. Poindexter (Comment #260).

[304] 1–800 CONTACTS (Comment #1140).

[305] 15 U.S.C. 7604.

[306] American Society for Cataract and Refractive Surgery (Comment #1148) (noting that the preamble to the proposed Rule referred to a "qualified medical professional" rather than a "qualified professional in the field"). This commenter also noted that the phrase "with sufficient detail" is not in the Act. Such a requirement is necessary so that the Commission can review the reasons for an expiration date of less than one year. The inability to conduct such a review could significantly compromise the Commission's ability to enforce this provision.

[307] 69 FR at 5450.

[308] 15 U.S.C. 7605.

associations, urged the Commission to add another provision to the Rule which would prohibit false or misleading advertisements regarding the Act or Rule.[309] A number of commenters also suggested that the Rule specifically prohibit false or misleading ads regarding the amount a customer can save by purchasing contact lenses from a particular seller.[310] Other commenters more generally urged the Commission to scrutinize sellers' advertising for deceptive claims.[311] The Act addressed only one specific type of deceptive claim. Section 5 of the Commission Act already provides sufficient authority for the Commission to address other deceptive claims in advertising for contact lenses, and so there is no need to address them in the Rule.

H. Section 315.8: Prohibition of Waivers

Subsection 315.8 of the proposed Rule stated that a "prescriber may not place on a prescription, or require the patient to sign, or deliver to the patient, a form or notice waiving or disclaiming the liability or responsibility of the prescriber for the accuracy of the eye examination."[312] The provision further stated that the "preceding sentence does not impose liability on a prescriber for the ophthalmic goods and services dispensed by another seller pursuant to the prescriber's correctly verified prescription."[313] This provision was taken verbatim from Section 7 of the Act.[314] The Commission has decided to adopt this provision without modification in the Final Rule.

The Commission received one comment from a prescriber who voiced his support for the provision.[315] A few prescribers were concerned about their liability in the event that contact lenses sold to a patient via passive verification eventually lead to a lawsuit against the prescriber.[316] Traditionally, such liability issues are determined by state law. Moreover, the language of the Act does not indicate that Congress intended to address liability issues aside from the specific matters covered by Section 7 of the Act.

I. Section 315.9: Enforcement

Section 315.9 of the proposed Rule addressed the Commission's enforcement of the Rule.[317] Section 315.9 provided that a violation of the Rule "shall be treated as a violation of a rule under Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a," and also stated that "the Commission will enforce this Rule in the same manner, by the same means, and with the same jurisdiction, powers, and duties as are available to it pursuant to the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*"[318] Commenters did not suggest any changes to the language of this enforcement provision; the Commission is adopting it without modification.

J. Section 315.10: Severability

Section 315.10 of the proposed Rule stated that the provisions of the Contact Lens Rule are separate and severable from one another, and that if any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect. The Commission received no comments on this provision and retains it.

K. Section 315.11: Preemption

A number of comments asked that the Commission clarify to what extent the final Rule preempts State law. For example, some commenters urged the Commission to clarify that the Rule preempts State laws on issues such as prescription expiration dates, the substitution of equivalent brand contact lenses, and other allegedly "anti-competitive" State laws.[319] One commenter sought guidance about whether the Act or the Rule would preempt existing State law relating to the release of personally identifiable information.[320] Finally, other commenters asked the Commission to define the term "seller" to preempt current State laws that may seek to limit or place conditions on who may sell contact lenses, such as State licensing and registration requirements.[321]

A Federal law may preempt State law either through (1) express statutory preemption; (2) implied preemption where the intent of the Federal law is to occupy the field exclusively; or (3) implied preemption where State and Federal law actually conflict.[322] A conflict may arise where the language of Federal and State laws is inconsistent.[323] A conflict also may arise if State law "stand[s] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[324]

The Act does not expressly state that it preempts any State laws. The language of the Act, however, appears to be inconsistent with the language of some State laws. For example, the Act sets an expiration date for contact lens prescriptions of "not less than one year after the issue date of the prescription if * * * State law specifies * * * a date that is less than one year after the issue date."[325] Consequently, the Act preempts any State laws that establish a prescription expiration date of less than one year.[326]

In addition, certain State laws regarding prescription release and verification requirements appear to be an obstacle to the accomplishment of the purposes and objectives of the Act. The Act was intended to create "[a] uniform national standard for prescription release and verification * * *."[327] The House committee

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[309] *E.g.*, Nebraska Optometric Association (Comment #1083) (also seeking prohibition against sellers falsely informing patients of prescribers' refusal to verify prescriptions, or for encouraging patients to file false complaints against prescribers); Ohio Optometric Association (Comment #1151) (same).

[310] *E.g.*, North Carolina State Optometric Society (Comment #1074); Kansas Optometric Association (Comment #1153); New Mexico Optometric Association (Comment #1081); Ohio Optometric Association (Comment #1151); M. Dean (Comment #148).

[311] *E.g.*, Arizona Optometric Association. (Comment #1072); W. West (Comment #126).

[312] 69 FR at 5450.

[313] *Id.*

[314] 15 U.S.C. 7606.

[315] D. Pao (Comment #139).

[316] Tupelo Eye Clinic/Chappell (Comment #11); J.B. Rogers, O.D. (Comment #1119).

[317] *See* 69 FR at 5450.

[318] *Id.*

[319] Costco Wholesale Corporation (Comment #1061) (Rule should make clear that State law prohibiting substitution of equivalent brand name lenses are superceded by Act and Rule); Wal-Mart Optical Division (Comment #1070) (Rule should preempt any State law setting prescription expiration less than one year, and any other anti-competitive State laws); Hon. J. Sensenbrenner, U.S. House of Rep. (Comment #1246) (Act intended to preempt States from erecting regulatory or other barriers intended to artificially restrict or limit consumers' ability to purchase contact lenses from third-party sellers).

[320] New York State Optometric Association (Comment #1073) (citing New York State Education Department ruling that the release of personally identifiable information without patient's prior written consent constitutes unprofessional conduct potentially subject to professional discipline; noting that HIPAA allows State privacy rules to be more restrictive than Federal requirements). Another commenter raised a similar issue, stating that Florida law prohibits optometrists from releasing patient information without patient consent. Florida Board of Optometry (Comment #1100).

[321] Wal-Mart Optical Division (Comment #1070); 1–800 CONTACTS (Comment #1140).

[322] *See Lorillard Tobacco Co.* v. *Reilly*, 533 U.S. 525, 121 S. Ct. 2404, 2414 (2001); *Crosby* v. *National Foreign Trade Council*, 530 U.S. 363, 372–73 (2000); *English* v. *General Elec. Co.*, 496 U.S. 72, 78–79 (1990).

[323] *See English*, 496 U.S. at 79.

[324] *Freightliner Corp.* v. *Myrick*, 514 U.S. 280, 287 (1995); *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941).

[325] *See* 15 U.S.C. 7604(a)(2).

[326] There may be other direct conflicts between the Act and State laws, including, for example, State laws conflicting with the Act's provision allowing the substitution of equivalent brand contact lenses under certain circumstances, and State laws requiring written authorization from a patient as a condition of verifying contact lens prescription information. To the extent that such State laws actually conflict with the Act, they would also be preempted.

[327] H. Rep. No. 108–318, at 5 (2003).

report stated that such a standard would "best serve the consumer" because it "promotes competition, consumer choice, and lower prices by extending to contact lens wearers the same automatic right to copies of their own prescriptions and allows consumers to purchase contact lenses from the provider of their choice.[328]

The Commission believes that State laws or regulations restricting prescription release or requiring "active" prescription verification—that is, prescribers actually must confirm and verify all prescriptions to sellers—would frustrate the purpose of the Act. Congress clearly intended to allow consumers greater freedom to choose the seller from whom they purchase their contact lenses. To further this goal, the Act requires that consumers receive their prescriptions at the end of the contact lens fitting process. It also provides that a seller may ship if a prescriber has not verified a prescription within a defined period of time, thereby preventing prescribers from failing to respond to a verification request to preclude consumers from buying contact lenses from a different seller. Consequently, the Commission concludes that the Act preempts any State laws or regulations that restrict prescription release or require active verification, because they would undermine Congress's purpose of giving consumers greater freedom in their choice of sellers from whom they purchase their contact lenses.[329]

Accordingly, the Commission has added part 315.11 to the final Rule that explicitly preempts State and local laws and regulations that establish a prescription expiration date of less than one year or that restrict prescription release or require active verification. In addition, part 315.11 also preempts any other State or local laws or regulations that are inconsistent with the Act or this part but only to the extent of the inconsistency.

III. Clerical Amendments to the Ophthalmic Practice Rules (16 CFR Part 456)

In its NPRM, the Commission also proposed two clerical amendments to the Ophthalmic Practice Rules designed to clarify the relationship between those Rules and the Contact Lens Rule. First, the Commission proposed changing the title of the Ophthalmic Practices Rules to "Ophthalmic Practice Rules (Eyeglass Rule)." Second, the Commission proposed adding to the Ophthalmic Practice Rules a cross-reference to the Contact Lens Rule, similar to the reference contained in section 315.1 of the Contact Lens Rule. The Commission received no comments on these proposed amendments and adopts them without modification.[330]

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, as amended, 44 U.S.C. 3501 *et seq.* ("PRA"), the Commission submitted the proposed Rule to the Office of Management and Budget ("OMB") for review. The OMB has approved the Rule's information collection requirements.[331] The Commission did not receive any comments that necessitated modifying its original burden estimates for the Rule's information collection requirements.

Disclosures: As set forth in the NPRM, the Rule imposes certain disclosure requirements on contact lens prescribers, as required by the Act. Specifically, prescribers must provide a copy of a patient's contact lens prescription to the patient or an authorized third party upon completion of a contact lens fitting.[332]

A few commenters confirmed that the Commission estimate of one minute is an appropriate estimation of the time it takes prescribers to provide a copy of a contact lens prescription to a patient at the completion of a contact lens fitting.[333] The Commission did not receive comments on its estimates of the burden of providing a copy of the prescription to an authorized third party.

Several commenters—primarily prescribers—stated that responding to verification requests from sellers takes more than one minute.[334] Some of these commenters noted that the verification process may entail a number of steps, including answering the telephone, recording the verification request information, pulling the patient's chart, providing the information to the prescriber, reviewing the information and making a decision about the request, communicating information to the seller, and refiling the chart.[335]

Responding to a verification request does not impose a paperwork burden under the PRA, however, because the Rule does not require the prescriber to provide information to a third party. Rather, under the Rule, the prescriber determines whether to respond to a verification request, and, if so, what information to provide to the seller. If, for example, the prescription information contained in a verification request is not expired, inaccurate or otherwise invalid, the prescriber need not respond at all. Thus, depending on the particular circumstances of a particular verification request, the prescriber may or may not disclose information. Accordingly, these comments do not necessitate revising the Commission's original burden estimate.

Recordkeeping: The proposed Rule also would impose recordkeeping requirements on both prescribers and sellers. Prescribers, as required by the Act, must document in their patients'

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[328] *Id.*

[329] The House Committee that passed the Act reached the same conclusion: "The Committee believes that any State law with an active or positive contact lens prescription verification system would stand as an obstacle to the accomplishment of the full purposes and objectives of this Act. Practically, it would be impossible to comply with the terms of this Act and an active verification scheme. Therefore, it is the intent of the Committee that the passive verification system in section 4(d) preempt any conflicting State laws that use active or positive contact lens prescription verification systems." *Id.* at 9–10.

[330] One commenter asked the Commission to add a new provision to the Eyeglass Rule which would allow sellers to request eyeglass prescriptions from prescribers on behalf of patients. Wal-Mart Optical Division (Comment #1070). This suggestion is outside the scope of the Contact Lens Rule rulemaking and would constitute a substantive change to the Eyeglass Rule requiring a full rulemaking proceeding, which the Commission declines to undertake.

[331] The assigned OMB control number is 3084–0127.

[332] *See* 69 FR at 5444; *see also* 15 U.S.C. 7601(a). The Commission has retained in the relevant Rule provision as originally proposed.

[333] *E.g.*, American Society for Cataract and Refractive Surgery (Comment #1148); Poindexter (Comment #260); E. Lamp, O.D. (Comment #714). One commenter noted that the time is increased to approximately three (3) minutes, however, if a patient subsequently requests another copy of the prescription. Poindexter (Comment #260). *See also* American Society for Cataract and Refractive Surgery (Comment #1148) (noting that providing subsequent copies of prescriptions will take more than one minute, because staff must pull chart, provide to prescriber, prepare prescription, etc.). Because the Rule does not require prescribers to provide such additional copies, this comment does not necessitate modification of the Commission's original burden estimate.

[334] *E.g.*, Tupelo Eye Clinic/Chappell (Comment #11) (suggesting amending the Commission's cost factor to more accurately reflect the true cost, but not providing alternate time estimate); W. West (Comment #126) (estimating one minute of prescriber and five minutes of staff time); Staff (Comment #131); American Society for Cataract and Refractive Surgery (Comment #1148); E. Lamp, O.D. (Comment #714) (estimating one minute for staff and one minute for prescriber for each verification request); H.G. Schneider, M.D. (Comment #1006) (estimating minimum of 20 minutes for telephone verification); S. Renner, O.D. (Comment #850) (estimating 45 minutes to deal with automated verification request).

[335] *E.g.*, Tupelo Eye Clinic/Chappell (Comment #11); American Society for Cataract and Refractive Surgery (Comment #1148).

records the medical reasons for setting a contact lens prescription expiration date of less than one year.[336] The Commission did not receive any comments on its burden estimates for this requirement.

Contact lens sellers must maintain records for three years of all direct communications involved in obtaining verification of a contact lens prescription, as well as prescriptions, or copies thereof, which they receive directly from consumers or prescribers.[337] One contact lens seller asked the Commission to specify in the Rule that an electronic entry—in lieu of maintaining actual telephone bills—would satisfy the requirement that sellers maintain records of direct communication occurring via telephone.[338] The Commission already has deleted from the final Rule the requirement that sellers maintain telephone bills, and clarified that electronic storage of telephone log information is permitted. Accordingly, this comment does not necessitate an increase in the Commission's original burden estimate.[339]

V. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires an agency to provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule and a Final Regulatory Flexibility Analysis ("FRFA") with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605.

In its NPRM, the Commission stated its expectation that the proposed Rule would not have a significant economic impact on a substantial number of small entities.[340] The Commission noted that the Act [341] expressly mandates most, if not all, of the Rule's requirements. It thus accounts for most, if not all, of the economic impact of the proposed Rule.[342] Further, the Commission estimated that the burdens most likely to be imposed on small entities (such as many contact lens prescribers) were likely to be relatively small: providing contact lens prescriptions to patients or their agents, recording the medical reasons for setting prescription expiration dates of less than one year, and verifying prescription information.[343] Finally, the Commission estimated that the Rule's more significant recordkeeping burdens likely would fall primarily on larger sellers of contact lenses, the entities more likely to seek verification of prescriptions and thus trigger those requirements.[344]

For those reasons, the Commission deemed the NPRM as notice to the Small Business Administration of the agency's certification of no effect.[345] Nonetheless, the Commission determined that it was appropriate to publish an IRFA in order to inquire into the impact of the proposed Rule on small entities. Having received only a small number of comments on the IRFA, the Commission has prepared the following FRFA, and confirms its certification of no effect.

A. Need for and Objectives of the Final Rule

The Act directs the Commission to prescribe rules implementing the Act not later than 180 days after the Act takes effect on February 4, 2004.[346] Accordingly, the Commission issued a proposed Contact Lens Rule on February 4, 2004, and announces its final Rule in this document. The objectives of the Rule are to implement the Act and effectuate its intent to provide for the availability of contact lens prescriptions to consumers.

B. Significant Issues Raised by Public Comments, Summary of Agency's Assessment of These Issues, and Changes, If Any, Made in Response

The Commission received very few comments on its IRFA. These comments generally challenged the Commission's expectation that the Act and Rule will not have a significant economic impact on a substantial number of small entities. One comment stated that, "[w]hile we agree that most of these burdens are mandated by the Act, they will nonetheless be quite substantial," and, as the Commission acknowledged in its NPRM, "most of the prescribers affected by this statute will be small entities." [347] In particular, the comments argued that the burden imposed on small entities by the Act's verification requirement is substantial, as responding to verification requests takes significant time and many prescribers receive multiple requests per day.[348] To reduce this burden, one comment suggested that the Rule limit the number of verifications and prescription releases that small business prescribers must perform for a particular customer.[349]

The Commission recognizes the Rule imposes burdens on small entities, and the Commission has addressed some of these burdens in the context of the Paperwork Reduction Act in above. However, these burdens are mandated by the Act. Moreover, some of these burdens are minimal, relative to prescribers' overall business costs. For example, the Commission has estimated—and commenters agree—that prescription release will require approximately one minute per patient, and that documenting medical reasons for setting prescription expiration dates shorter than one year likely already occurs in the ordinary course of business. The obligation to verify prescriptions imposes more burden, but the evidence in the record suggests it also is relatively small as compared to overall business costs: although one commenter indicated that some prescribers receive multiple verification requests per day, other evidence in the record suggests that prescribers receive, on average, just under two (2) verification requests per week—a significantly smaller burden.[350]

Furthermore, as discussed earlier, the Commission has made certain revisions in the final Rule to reduce the burdens on businesses regardless of size—*e.g.*, permitting electronic recordkeeping of certain direct communications and eliminating the proposed requirement to maintain telephone bills. In addition, the final Rule permits some limitation on prescription release and verification. For example, the Commission has indicated that the Rule does not require prescribers to provide additional copies of prescriptions to patients after the initial release upon completion of a contact lens fitting, although the Rule

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[336] *See* 69 FR at 5444; *see also* 15 U.S.C. 7604(b)(1).

[337] *See* 69 FR at 5444; *see also* 15 U.S.C. 7603(b).

[338] Wal-Mart Optical Division (Comment #1070). Wal-Mart did not specifically invoke the Commission's PRA estimates, but commented generally on the recordkeeping provisions of the proposed Rule. Nonetheless, the Commission has considered these comments as relevant to its PRA estimates.

[339] As discussed *supra*, the new provision in the final rule, that concerns recordkeeping for those sellers who choose to count a prescriber's regular Saturday business hours in the eight hour verification period, is not a substantive or material modification to the collection of information.

[340] *See* 69 FR at 5445.

[341] 15 U.S.C. 7601–7610.

[342] See 59 FR at 5445.

[343] *Id.*

[344] *Id.*

[345] *Id.*

[346] 15 U.S.C. 7607.

[347] American Society for Cataract and Refractive Surgery (Comment #1148).

[348] American Academy of Ophthalmology (Comment #1057) (stating that responding to a high volume of requests requires significant resources, assuming five minutes per request); American Society for Cataract and Refractive Surgery (Comment #1148) (burden of verifying likely to be substantial).

[349] K. Poindexter (Comment #260).

[350] *See* American Academy of Ophthalmology (Comment #1057) (up to 10 per day is not uncommon); 1–800 CONTACTS (Comment #1140) at 55.

does not prohibit this practice either.[351] Moreover, the Commission expects that, in time, as prescribers and sellers gain experience in the verification process and become more efficient, the burdens imposed on small businesses will decrease. Accordingly, the Commission does not believe the burdens imposed by the Rule on small entities are significant, and has not made any changes to the Rule in response to the comments received on its IRFA.

C. Description and an Estimate of the Number of Small Entities to Which the Final Rule Will Apply, or Explanation Why No Estimate Is Available

The Rule applies to both "prescribers" and "sellers" of contact lenses. As stated in the NPRM,[352] the Commission staff believes that many prescribers will fall into the category of small entities (*e.g.*, Offices of Optometrists less than $6 million in size), but that, for the most part, sellers subject to the Rule's recordkeeping requirements likely will be larger businesses.[353] Determining a precise estimate of the number of small entities covered by the Rule's disclosure and recordkeeping requirements is not readily feasible, and the Commission did not receive comments providing this information. However, the Commission generally estimates that the Rule will affect approximately 50,000 prescribers, many of whom are likely to be small businesses; some comments confirm that the Rule will likely impact a large number of small businesses.[354]

D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements, and the Type of Professional Skills That Will Be Necessary To Comply

As mandated by the Act, the Rule imposes disclosure and recordkeeping requirements, within the meaning of the Paperwork Reduction Act, on contact lens prescribers and sellers. With respect to disclosure, section 315.3(a) the Rule requires prescribers to provide patients with a copy of their contact lens prescription upon completion of a contact lens fitting, and to provide such prescriptions to third parties authorized to act on behalf of patients.

The Rule also implements several recordkeeping requirements. First, if a prescriber sets a contact lens prescription expiration date shorter than one year, section 315.6(b) of the Rule requires the prescriber to document the medical reasons justifying the shorter expiration date and maintain that record for three years. Second, section 315.5(g) of the Rule requires sellers to maintain records of all direct communications relating to prescription verification. The specific records a seller must retain vary depending on the manner of communication.

The Commission has obtained clearance from the Office of Management and Budget ("OMB") for these requirements.[355] The Commission staff estimated that the proposed Rule's disclosure and recordkeeping requirements referenced above would impose an average annual burden of 600,000 hours on prescribers—primarily consisting of time spent by prescribers writing and providing prescriptions to their patients—for a total annual labor cost of $25.2 million. For sellers, the staff estimated that the proposed Rule would impose an average annual burden of 300,000 hours—primarily consisting of time spent by clerical staff performing recordkeeping—for a total annual labor cost of $3 million.

E. Steps the Agency Has Taken in the Final Rule To Minimize any Significant Economic Impact of the Final Rule on Small Entities, Consistent With Applicable Statutory Objectives, Including the Factual and Legal Bases for the Alternatives Adopted and Those Rejected

The final Rule's disclosure and recordkeeping requirements are designed to impose the minimum burden on all affected members of the industry, regardless of size. The Act itself does not allow the Commission any latitude to treat small businesses differently, such as by exempting a particular category of firm or setting forth a lesser standard of compliance for any category of firm. Thus, although the Commission recognizes that the Rule imposes some burden on small entities, it does not believe the burden will be significant, and, in any event, the Commission is largely constrained by the fact that the Act mandates those burdens.

Nonetheless, the Commission has indicated above that the Rule permits some limitation on prescription release and verification by prescribers. Moreover, in time, as prescribers and sellers gain experience and efficiency in the verification process, the Commission expects that the burdens imposed on small businesses will decrease. Accordingly, the Commission confirms its initial certification of no effect.

VI. Final Rule

List of Subjects in 16 CFR Parts 315 and 456

Advertising, Medical devices, Ophthalmic goods and services, Trade practices.

■ Accordingly, for the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR chapter I as follows:

■ 1. Add a new part 315 to read as follows:

PART 315—CONTACT LENS RULE

Sec.

Authority: Pub. L. 108–164, secs. 1–12; 117 Stat. 2024 (15 U.S.C. 7601–7610).

§ 315.1 Scope of regulations in this part.

This part, which shall be called the "Contact Lens Rule," implements the Fairness to Contact Lens Consumers Act, codified at 15 U.S.C. 7601–7610, which requires that rules be issued to address the release, verification, and sale of contact lens prescriptions. This part specifically governs contact lens prescriptions and related issues. Part 456 of Title 16 governs the availability of eyeglass prescriptions and related issues (the Ophthalmic Practice Rules (Eyeglass Rule)).

§ 315.2 Definitions.

For purposes of this part, the following definitions shall apply:

Business hour means an hour between 9 a.m. and 5 p.m., during a weekday (Monday through Friday), excluding Federal holidays. "Business hour" also may include, at the seller's option, a prescriber's regular business hours on Saturdays, provided that the seller has actual knowledge of these hours.

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[351] *See* discussion of section 315.5, *supra*.

[352] *See* 69 FR at 5445.

[353] *See* 12 CFR Part 121.201 (Small Business Administration's Table of Small Business Size Standards).

[354] *E.g.*, American Society for Cataract and Refractive Surgery (Comment #1148); American Academy of Ophthalmology (Comment #1057) (approximately 40% of AAO members are solo practitioners with very small staffs).

[355] The assigned OMB clearance number is 3084–0127.

"Business hour" shall be determined based on the time zone of the prescriber.

"Eight (8) business hours" shall be calculated from the time the prescriber receives the prescription verification information from the seller, and shall conclude when eight (8) business hours have elapsed. For verification requests received by a prescriber during non-business hours, the calculation of "eight (8) business hours" shall begin at 9 a.m. on the next weekday that is not a Federal holiday or, if applicable, on Saturday at the beginning of the prescriber's actual business hours.

Commission means the Federal Trade Commission.

Contact lens means any contact lens for which State or Federal law requires a prescription.

Contact lens fitting means the process that begins after an initial eye examination for contact lenses and ends when a successful fit has been achieved or, in the case of a renewal prescription, ends when the prescriber determines that no change in the existing prescription is required, and such term may include:

(1) An examination to determine lens specifications;

(2) Except in the case of a renewal of a contact lens prescription, an initial evaluation of the fit of the contact lens on the eye; and

(3) Medically necessary follow-up examinations.

Contact lens prescription means a prescription, issued in accordance with State and Federal law, that contains sufficient information for the complete and accurate filling of a prescription for contact lenses, including the following:

(1) The name of the patient;

(2) The date of examination;

(3) The issue date and expiration date of prescription;

(4) The name, postal address, telephone number, and facsimile telephone number of prescriber;

(5) The power, material or manufacturer or both of the prescribed contact lens;

(6) The base curve or appropriate designation of the prescribed contact lens;

(7) The diameter, when appropriate, of the prescribed contact lens; and

(8) In the case of a private label contact lens, the name of the manufacturer, trade name of the private label brand, and, if applicable, trade name of equivalent brand name.

Direct communication means completed communication by telephone, facsimile, or electronic mail.

Issue date means the date on which the patient receives a copy of the prescription at the completion of a contact lens fitting.

Ophthalmic goods are contact lenses, eyeglasses, or any component of eyeglasses.

Ophthalmic services are the measuring, fitting, and adjusting of ophthalmic goods subsequent to an eye examination.

Prescriber means, with respect to contact lens prescriptions, an ophthalmologist, optometrist, or other person permitted under State law to issue prescriptions for contact lenses in compliance with any applicable requirements established by the Food and Drug Administration. "Other person," for purposes of this definition, includes a dispensing optician who is permitted under State law to issue prescriptions and who is authorized or permitted under State law to perform contact lens fitting services.

Private label contact lenses mean contact lenses that are sold under the label of a seller where the contact lenses are identical to lenses made by the same manufacturer but sold under the labels of other sellers.

§ 315.3 Availability of contact lens prescriptions to patients.

(a) *In general.* When a prescriber completes a contact lens fitting, the prescriber:

(1) Whether or not requested by the patient, shall provide to the patient a copy of the contact lens prescription; and

(2) Shall, as directed by any person designated to act on behalf of the patient, provide or verify the contact lens prescription by electronic or other means.

(b) *Limitations.* A prescriber may not:

(1) Require the purchase of contact lenses from the prescriber or from another person as a condition of providing a copy of a prescription under paragraph (a)(1) or (a)(2) of this section or as a condition of verification of a prescription under paragraph (a)(2) of this section;

(2) Require payment in addition to, or as part of, the fee for an eye examination, fitting, and evaluation as a condition of providing a copy of a prescription under paragraph (a)(1) or (a)(2) of this section or as a condition of verification of a prescription under paragraph (a)(2) of this section; or

(3) Require the patient to sign a waiver or release as a condition of releasing or verifying a prescription under paragraph (a)(1) or (a)(2) of this section.

§ 315.4 Limits on requiring immediate payment.

A prescriber may require payment of fees for an eye examination, fitting, and evaluation before the release of a contact lens prescription, but only if the prescriber requires immediate payment in the case of an examination that reveals no requirement for ophthalmic goods. For purposes of the preceding sentence, presentation of proof of insurance coverage for that service shall be deemed to be a payment.

§ 315.5 Prescriber verification.

(a) *Prescription requirement.* A seller may sell contact lenses only in accordance with a contact lens prescription for the patient that is:

(1) Presented to the seller by the patient or prescriber directly or by facsimile; or

(2) Verified by direct communication.

(b) *Information for verification.* When seeking verification of a contact lens prescription, a seller shall provide the prescriber with the following information through direct communication:

(1) The patient's full name and address;

(2) The contact lens power, manufacturer, base curve or appropriate designation, and diameter when appropriate;

(3) The quantity of lenses ordered;

(4) The date of patient request;

(5) The date and time of verification request;

(6) The name of a contact person at the seller's company, including facsimile and telephone numbers; and

(7) If the seller opts to include the prescriber's regular business hours on Saturdays as "business hours" for purposes of paragraph (c)(3) of this section, a clear statement of the prescriber's regular Saturday business hours.

(c) *Verification events.* A prescription is verified under paragraph (a)(2) of this section only if one of the following occurs:

(1) The prescriber confirms the prescription is accurate by direct communication with the seller;

(2) The prescriber informs the seller through direct communication that the prescription is inaccurate and provides the accurate prescription; or

(3) The prescriber fails to communicate with the seller within eight (8) business hours after receiving from the seller the information described in paragraph (b) of this section. During these eight (8) business hours, the seller shall provide a reasonable opportunity for the prescriber to communicate with the seller concerning the verification request.

(d) *Invalid prescription.* If a prescriber informs a seller before the deadline

under paragraph (c)(3) of this section that the contact lens prescription is inaccurate, expired, or otherwise invalid, the seller shall not fill the prescription. The prescriber shall specify the basis for the inaccuracy or invalidity of the prescription. If the prescription communicated by the seller to the prescriber is inaccurate, the prescriber shall correct it, and the prescription shall then be deemed verified under paragraph (c)(2) of this section.

(e) *No alteration of prescription.* A seller may not alter a contact lens prescription. Notwithstanding the preceding sentence, a seller may substitute for private label contact lenses specified on a prescription identical contact lenses that the same company manufactures and sells under different labels.

(f) *Recordkeeping requirement—verification requests.* A seller shall maintain a record of all direct communications referred to in paragraph (a) of this section. Such record shall consist of the following:

(1) For prescriptions presented to the seller: the prescription itself, or the facsimile version thereof (including an email containing a digital image of the prescription), that was presented to the seller by the patient or prescriber.

(2) For verification requests by the seller:

(i) If the communication occurs via facsimile or e-mail, a copy of the verification request, including the information provided to the prescriber pursuant to paragraph (b) of this section, and confirmation of the completed transmission thereof, including a record of the date and time the request was made;

(ii) If the communication occurs via telephone, a log:

(A) Describing the information provided pursuant to paragraph (b) of this section,

(B) Setting forth the date and time the request was made,

(C) Indicating how the call was completed, and

(D) Listing the names of the individuals who participated in the call.

(3) For communications from the prescriber, including prescription verifications:

(i) If the communication occurs via facsimile or e-mail, a copy of the communication and a record of the time and date it was received;

(ii) If the communication occurs via telephone, a log describing the information communicated, the date and time that the information was received, and the names of the individuals who participated in the call.

(4) The records required to be maintained under this section shall be maintained for a period of not less than three years, and these records must be available for inspection by the Federal Trade Commission, its employees, and its representatives.

(g) *Recordkeeping requirement—Saturday business hours.* A seller that exercises its option to include a prescriber's regular Saturday business hours in the time period for verification specified in §315.5(c)(3) shall maintain a record of the prescriber's regular Saturday business hours and the basis for the seller's actual knowledge thereof. Such records shall be maintained for a period of not less than three years, and these records must be available for inspection by the Federal Trade Commission, its employees, and its representatives.

§315.6 Expiration of contact lens prescriptions.

(a) *In general.* A contact lens prescription shall expire:

(1) On the date specified by the law of the State in which the prescription was written, if that date is one year or more after the issue date of the prescription;

(2) Not less than one year after the issue date of the prescription if such State law specifies no date or specifies a date that is less than one year after the issue date of the prescription; or

(3) Notwithstanding paragraphs (a)(1) and (a)(2) of this section, on the date specified by the prescriber, if that date is based on the medical judgment of the prescriber with respect to the ocular health of the patient.

(b) *Special rules for prescriptions of less than one year.*

(1) If a prescription expires in less than one year, the specific reasons for the medical judgment referred to in paragraph (a)(3) of this section shall be documented in the patient's medical record with sufficient detail to allow for review by a qualified professional in the field.

(2) The documentation described in the paragraph above shall be maintained for a period of not less than three years, and it must be available for inspection by the Federal Trade Commission, its employees, and its representatives.

(3) No prescriber shall include an expiration date on a prescription that is less than the period of time that he or she recommends for a reexamination of the patient that is medically necessary.

§315.7 Content of advertisements and other representations.

Any person who engages in the manufacture, processing, assembly, sale, offering for sale, or distribution of contact lenses may not represent, by advertisement, sales presentation, or otherwise, that contact lenses may be obtained without a prescription.

§315.8 Prohibition of certain waivers.

A prescriber may not place on a prescription, or require the patient to sign, or deliver to the patient, a form or notice waiving or disclaiming the liability or responsibility of the prescriber for the accuracy of the eye examination. The preceding sentence does not impose liability on a prescriber for the ophthalmic goods and services dispensed by another seller pursuant to the prescriber's correctly verified prescription.

§315.9 Enforcement.

Any violation of this Rule shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, regarding unfair or deceptive acts or practices, and the Commission will enforce this Rule in the same manner, by the same means, and with the same jurisdiction, powers, and duties as are available to it pursuant to the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

§315.10 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

§315.11 Effect on state and local laws.

(a) State and local laws and regulations that establish a prescription expiration date of less than one year or that restrict prescription release or require active verification are preempted.

(b) Any other State or local laws or regulations that are inconsistent with the Act or this part are preempted to the extent of the inconsistency.

PART 456—[AMENDED]

■ 2. The authority citation for part 456 continues to read as follows:

Authority: 15 U.S.C. 57a; 5 U.S.C. 552.

■ 3. Revise the title of part 456 to read as follows:

PART 456—OPHTHALMIC PRACTICE RULES (EYEGLASS RULE)

■ 4. Add a new § 456.5 to read as follows:

§ 456.5 Rules applicable to prescriptions for contact lenses and related issues.

Rules applicable to prescriptions for contact lenses and related issues may be found at 16 CFR part 315 (Contact Lens Rule).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–14969 Filed 7–1–04; 8:45 am]

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Federal Register

Friday,
July 2, 2004

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 16 and 39
Federal Acquisition Regulation; Share-in-Savings Contracting; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 16 and 39

[FAR Case 2003–008]

RIN 9000–AJ74

Federal Acquisition Regulation; Share-in-Savings Contracting

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 implement Section 210 of the E-Government Act of 2002. Section 210 authorizes Governmentwide use of Share-in-Savings (SIS) contracts for information technology (IT). SIS contracts offer an innovative approach for encouraging industry to share creative technology solutions with the Government. Through a properly structured SIS contract, agencies may lower costs and improve service delivery without large "up front" investments by having the contractor provide the technology investment and allowing the contractor to share with the government in the savings achieved.

DATES: Interested parties should submit comments in writing on or before August 31, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2003–008 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR Case number to submit comments.
- E-mail: *farcase.2003–008@gsa.gov*. Include FAR case 2003–008 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Instructions: All submissions received must include the agency name and case number for this rulemaking. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

Please submit comments only and cite FAR case 2003–008 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. For clarification of content, contact Craig Goral, Program Analyst, at 202–501–3856, or by e-mail at *craig.goral@gsa.gov*. Please cite FAR case 2003–008.

SUPPLEMENTARY INFORMATION:

A. Background

Section 210 of the E-Government Act amends the Armed Services Procurement Act and the Federal Property and Administrative Services Act to address the use of SIS contracts for IT. Share-in-Savings is an innovative, performance-based concept that is intended to help an agency leverage its limited resources to improve or accelerate mission-related or administrative processes to meet strategic goals and objectives and lower costs for the taxpayer. Under an SIS contract, the contractor finances the work and then shares with the agency in the savings generated from contract performance. In general, agencies would agree to pay the contractor for services performed only if savings are realized and, in such cases, only a portion of the total savings realized.

Section 210, which sunsets at the end of 2005, authorizes an agency that awards an SIS contract for IT to retain its share of the savings, with certain exceptions. As a general rule, agencies would be required to ensure that funds are available and sufficient to make payments with respect to the first fiscal year of the contract and cover termination or cancellation costs. However, section 210 authorizes award of up to ten contracts (i.e., 5 among DOD, NASA, and the Coast Guard, and 5 among other agencies) during fiscal years 2004, and 2005 when funds are not made specifically available for the full costs of cancellation or termination of the contract—provided that the amount of unfunded contingent liability associated with cancellation and termination does not exceed the lesser of (1) 25 percent of the estimated costs of a cancellation or termination; or (2) $5 million. In signing the E-Government Act into law, the President stated that the executive branch shall "limit authorized waivers for funding of potential termination costs to appropriate circumstances, so as to minimize the financial risk to the government" and ensure SIS contracts are operated according to sound fiscal policy. Finally, SIS contracts entered into under section 210 are generally to be limited to a performance period not greater than 5 years, but may, under certain circumstances, and with appropriate approvals, be awarded for a period of up to 10 years.

On October 1, 2003, the Councils issued an advance notice of proposed rulemaking to solicit input for amendments to the FAR that would motivate contractors and successfully capture the benefits of SIS contracting. The ANPR included draft amendments reflecting the Councils' preliminary thinking. The Councils have used the draft amendments in the ANPR as a baseline for this rulemaking. Based on responses to the ANPR, however, the draft amendments have been revised to—

- Emphasize the need for an open and collaborative environment, both among interested stakeholders within government (e.g., program, budget, finance, and legal offices) and between Government and industry to facilitate due diligence and mitigate risk;
- Provide additional guidance to help agencies develop business cases to justify the use of SIS, including definitions of "benefit pool," "current baseline," and "projected baseline," and elements for successful analysis;
- Specify options for seeking competition;
- Describe considerations that may establish best value in the context of SIS contracting; and
- Assist contracting officers in determining what clauses need to be included in SIS contracts.

One commenter urged that the final FAR implementation make clear that some of the basic elements of SIS contracting are not dependent on the express authority provided by section 210 and therefore do not expire when section 210 sunsets. The Councils continue to evaluate whether certain guidance, presently proposed for FAR Subpart 39.3, should be addressed in other FAR parts.

The Councils welcome further public comment for consideration in finalizing this proposed rule and potentially for distributing to agencies for their use in preparing related guidance. The public is still encouraged to comment on the same nine areas identified in the ANPR (see the **Federal Register** at 68 FR 56614, October 1, 2003), with special emphasis on the following expanded area:

Cancellation and termination: How, if at all, should the determination of cancellation liability differ from the determination of termination liability, when the termination is for other than default? How, if at all, should the determination of cancellation and termination costs differ from that used in connection with multi-year contracts (see FAR 17.106–1(c))?

This is a significant regulatory action and, therefore, is 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 use of Share-in-Savings contracting will be targeted only to a limited number of information technology projects, and the impact on small businesses is not anticipated to be significant. 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 parts 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 2003–008), 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 Parts 16 and 39

Government procurement.

Dated: June 25, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 16 and 39 as set forth below:

1. The authority citation for 48 CFR parts 16 and 39 is revised to read as follows:

PART 16–TYPES OF CONTRACTS

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

16.401 General

2. Amend section 16.401 by adding paragraph (e) to read as follows:

* * * * *

(e) For related incentive concepts, refer to Subpart 39.3, Share-in-Savings Contracting, and 23.204, Energy-savings performance contracts.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

3. Add subpart 39.3, consisting of sections 39.300 through 39.309, to read as follows:

Subpart 39.3—Share-in-Savings Contracting

Sec.

Subpart 39.3—Share-in-Savings Contracting

39.300 Scope of subpart.

This subpart implements Section 210 of the E-Government Act of 2002 (Public Law 107–347) by prescribing policies and procedures for Share-in-Savings contracts for information technology.

39.301 Definitions.

As used in this subpart—

Benefit Pool—Savings realized based on the net difference between the current baseline costs and the projected (new) baseline costs derived from the implementation of the new project or program.

Cancellation means the cancellation (within a contractually specified time) of the total requirements of all remaining program years. Cancellation results when the contracting officer—

(1) Notifies the contractor of nonavailability of funds for contract performance for any subsequent program year; or

(2) Fails to notify the contractor that funds are available for performance of the succeeding program year requirement.

Current baseline means the estimated total cost to the Government to implement an information technology project through other than a Share-in-Savings contract. It includes all costs of ownership, including procurement, management, operation, maintenance, and administration.

Projected baseline means the estimated total cost to the Government to implement an information technology project through a Share-in-Savings contract.

Savings means—

(1) Monetary savings to an agency; or

(2) Savings in time or other quantifiable benefits realized by the agency, including enhanced revenues (other than enhanced revenues from the collection of fees, taxes, debts, claims, or other amounts owed the Federal Government).

Share-in-Savings contract means a contract under which—

(1) A contractor provides solutions for improving the agency's mission-related or administrative processes or for accelerating the achievement of agency missions; and

(2) The Government pays the contractor an amount equal to a portion of the quantifiable savings derived by the agency from—

(i) Any improvements in mission-related or administrative processes that result from implementation of the solution; or

(ii) Acceleration of achievement of agency missions.

39.302 Authority.

The E-Government Act of 2002 (Public Law 107–347) authorizes the head of an agency to enter into a Share-in-Savings contract for information technology. The authority under this Act expires on September 30, 2005.

39.303 Applicability.

This subpart applies only to information technology projects that are appropriate for Share-in-Savings contracting techniques.

39.304 General.

(a) In general, use of Share-in-Savings contracts should be considered—

(1) For projects involving significant innovation or process transformation;

(2) When there is senior level management support within the agency; and

(3) When there is acknowledgment that the contractor(s) will bear an unusual risk and an open and collaborative environment during the entire acquisition cycle is required to help mitigate that risk.

(b) Use of the share-in savings contract technique does not exempt agencies from the requirements for acquisition planning (see Subpart 7.1), and an information technology acquisition strategy (see 39.101(b)).

(c) Share-in-Savings contracts that are considered to be major IT acquisitions in accordance with OMB Circular A–11, section 53.2, are subject to the requirements of OMB Circular A–11, Part 7, "Planning, Budgeting, Acquisitions and Management of Capital Assets."

39.305 Limitations on Share-In-Savings contract period of performance.

(a) Except as provided in paragraph (b) of this section, a Share-in-Savings contract shall be awarded for a period of not more than five years.

(b) A Share-in-Savings contract may be awarded for a period greater than five years, but not more than 10 years, if other applicable requirements do not otherwise limit the length of the contract and the head of the agency determines in writing prior to award of the contract that—

(1) The level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the Government from obtaining the needed information technology competitively at a fair and reasonable price if the contract is limited in duration to a period of five years or less; and

(2) Use of the information technology to be acquired is likely to continue for a period of time sufficient to generate reasonable benefit for the Government.

39.306 Procedures.

39.306–1 Formation of an Integrated Project Team (IPT).

Agencies are strongly encouraged to form an IPT comprised of program, acquisition, budget, finance, information technology, and legal representatives.

39.306–2 Development of the Business Case.

(a) Agencies intending to use this subpart shall develop a business case. Agencies are strongly encouraged to complete the "Share-in Savings Business Case Decision Tool" at: *http://www.gsa.gov/shareinsavings*. The information provided from this tool will provide a preliminary assessment to help determine if the proposed project is suitable for the share in savings concept.

(b) The business case should minimally include a preliminary baseline analysis using the applicable elements established in paragraph (c) of this subsection. The baseline must be quantifiable since it will be the basis upon which a benefit pool is established to govern the share ratio and the amount of payment a contractor is to receive under a contract.

(c) The basic elements of the current and projected baselines are listed in paragraphs (c)(1) and (c)(2) of this subsection and cover estimated costs for the expected period of the Share-in-Savings contract.

(1) The estimated value of all contracts the Government would have awarded for procurement, management, maintenance, administration, and operation of the program; and

(2) The costs associated with the Government personnel assigned to the project.

(d) There must be a net difference between the *current* and *projected* baselines to result in a benefit pool large enough to ensure reasonable savings to the Government and to cover contractor costs and incentives commensurate with risk.

39.306–3 Use of performance-based contracts.

Share-in-Savings contracts shall be performance-based contracts. (See Subpart 37.6.)

39.306–4 Solicitation of Proposals.

(a) Solicitations for Share-in-Savings contracts shall adhere to the competition requirements of Part 6. Contracting officers may use any appropriate competitive procedures authorized by the FAR, including 8.404, "Using schedules," and 15.202, "Advisory multi-step process". Each solicitation shall include provisions and evaluation criteria ensuring that—

(1) The contractor's share of savings reflects the risks involved and market conditions; and

(2) The Government will realize best value from the contract including reasonable savings.

(b) When developing proposal evaluation criteria, agencies may consider the contractor Proposal Evaluation Model located at *http://www.gsa.gov/shareinsavings*.

39.306–5 Award.

Award shall be made on a best value basis upon consideration of technical factors, price related factors such as highest life cycle return on investment to the Government, as well as other factors such as highest overall net present value return to both the Government and the contractor.

39.306–6 Managing retained savings.

(a) Agencies may retain savings in excess of the total amount of savings paid to the contractor under the contract, but may not retain any portion of such savings that is attributable to a decrease in the number of civilian employees of the Federal Government performing the function.

(b) Except as provided in paragraph (c) of this section, savings shall be credited to the appropriation or fund against which charges were made to carry out the contract and shall be used for information technology.

(c) Amounts retained by the agency under this subpart shall—

(1) Without further appropriation, remain available until expended; and

(2) Be applied first to fund any cancellation or termination liabilities associated with Share-in-Savings procurements that are not fully funded.

39.307 Cancellation or termination.

39.307–1 Paying for cancellation or termination.

(a) The amount payable in the event of cancellation or termination of a Share-in-Savings contract shall be negotiated with the contractor at the time of contract award.

(b) If funds are not made available for the continuation of a Share-in-Savings contract in a subsequent fiscal year, the contract shall be cancelled or terminated. The costs of cancellation or termination may be paid out of—

(1) Appropriations available for the performance of the contract;

(2) Appropriations available for acquisition of the information technology procured under the contract, and not otherwise obligated; or

(3) Funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in 39.307–2.

39.307–2 Funding of cancellation or termination liability.

(a) Except as provided in paragraph (b) of this subsection, the funds obligated for Share-in-Savings contracts must be sufficient to cover any potential cancellation and/or termination costs.

(b)(1) The head of an agency may enter into Share-in-Savings contracts even if funds are not made specifically available for the full costs of cancellation or termination of the contract provided that—

(i) The action is approved as provided in paragraph (b)(1)(iii) of this subsection;

(ii) Funds are available and sufficient to make payments with respect to the first fiscal year of the contract; and

(iii) The following conditions are met regarding the funding of cancellation and termination liability:

(A) The amount of unfunded liability does not exceed the lesser of 25 percent

of the estimated costs of a cancellation or termination, or $5,000,000.

(B) An unfunded cancellation or termination liability in excess of $1,000,000 has been approved by the Director of the Office of Management and Budget (OMB).

(C) Notification has been provided to OMB in accordance with paragraph (c) of this subsection.

(2) The aggregate number of Share-in-Savings contracts that may be entered into under this paragraph may not exceed 5 in each of fiscal years 2004 and 2005 for each of the following groups of agencies:

(i) The Department of Defense, NASA, and the Coast Guard.

(ii) All other agencies.

(c) In addition to the requirements specified in paragraph (b) of this subsection, an agency planning to award a Share-in-Savings contract having an unfunded cancellation or termination liability in any amount must notify the Office of Management and Budget at least 30 days prior to solicitation issuance.

39.308 FAR clauses.

For the purposes of determining the clauses to be included in the contract, the contracting officer shall—

(a) Assume the contract type is "firm fixed price"; and

(b) Use the maximum cancellation amount as the contract value.

39.309 Acquisition-unique clauses.

(a)(1) Share-in-Savings contracts shall include a clause containing a quantifiable baseline that is to be the basis upon which a saving share ratio is established to govern the amount of payment a contractor is to receive under a contract.

(2) Before award of a Share-in-Savings contract, the agency senior procurement executive shall determine in writing that the terms of the baseline clause are quantifiable and will likely yield value to the Government.

(b) Contracting officers shall include a cancellation clause tailored to the specifics of the Share-in-Savings contract that describes, at a minimum, the cancellation amounts, the basis for those amounts, and the periods during which the Government may cancel the contract. The clause shall contain the amount that the Contractor and Government have agreed will be the maximum amount of Government liability under the contract in the event of cancellation.

(c) Contracting officers may use a termination for convenience clause other than one prescribed in 49.502 if the prescribed clauses do not adequately address the specifics of the Share-in-Savings contract. The clause shall contain the amount that the contractor and Government have agreed will be the maximum amount of Government liability under the contract in the event of termination for convenience.

(d) Contracting officers should consider the use of a technology refreshment clause to ensure the information technology provided under the contract incorporates desired technological advancements throughout the entire period of contract performance. In developing such a clause, contracting officers should consider similar terms and conditions available on the commercial market.

(e) Contracting officers may include other appropriate clauses not specifically prescribed in this Federal Acquisition Regulation (48 CFR Chapter 1) to ensure that the goals of the Share-in-Savings contract are attained, provided that such clauses are consistent with applicable statutes and regulations.

[FR Doc. 04–15028 Filed 7–1–04; 8:45 am]

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Friday,
July 2, 2004

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Miscellaneous Flight Requirements; Powerplant Installation Requirements; Public Address System; Trim Systems and Protective Breathing Equipment; and Powerplant Controls; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket Nos. FAA–2002–13859, FAA–2002–11272, FAA–2002–11271, FAA–2002–13438, FAA–2002–12244; Amendment No. 25–115]

RIN 2120–AI35

Miscellaneous Flight Requirements; Powerplant Installation Requirements; Public Address System; Trim Systems and Protective Breathing Equipment; and Powerplant Controls

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA amends the regulations governing airworthiness standards for transport category airplanes in six areas: miscellaneous flight requirements; powerplant installations; the public address system; trim systems; protective breathing equipment (PBE); and design requirements for powerplant valves controlled from the flight deck. Adoption of these amendments eliminates the regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements (JAR) of Europe. Currently, airplane manufacturers must satisfy both the U.S. and European airworthiness requirements to certificate transport category airplanes in the U.S. and Europe. Because U.S. manufacturers of transport category airplanes already meet the more stringent requirements of the JAR, adoption of these amendments will not affect current industry design practices.

DATES: This amendment becomes effective August 2, 2004.

FOR FURTHER INFORMATION CONTACT: Dionne Krebs, FAA, Transport Standards Staff, ANM–110, Federal Aviation Administration, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone 425–227–2250; facsimile 425–227–1100, e-mail *dionne.krebs@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also request a copy from the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591 [(202) 267–9680]. Be sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within our jurisdiction. If you are a small entity and have a question regarding this document you may contact your local FAA official or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.htm*, or by e-mailing us at *9–AWA–SBREFA@faa.gov*.

Background

This final rule responds to recommendations of the Aviation Rulemaking Advisory Committee (ARAC) submitted under the FAA's Fast Track Harmonization Program. It amends thirteen sections of the regulations governing airworthiness standards for transport category airplanes concerning: miscellaneous flight requirements; powerplant installations; the public address system; trim systems; protective breathing equipment (PBE); and design requirements for powerplant valves controlled from the flight deck. The FAA proposed these changes in five notices of proposed rulemaking (NPRM). The notices and the affected sections are listed in the table below.

Change No.	14 CFR section No.	Section title	Notice No.	Federal Register publication/ publication date
1	§ 25.111(c)(4)	Takeoff path.	02–01	67 FR 1846 01/14/2002
2	§ 25.147(c)(2)	Directional and lateral control (lateral control; general).		
3	§ 25.161(c)(2)	Trim (longitudinal).		
4	§ 25.161(e)	Trim (airplanes with four or more engines).		
5	§ 25.175(d)	Static longitudinal stability (landing).		
6	§ 25.945(b)(5)	Thrust or power augmentation system (fluid tanks).	02–02	67 FR 4856 01/31/2002
7	§ 25.973(d)	Fuel tank filler connection.		
8	§ 25.1181(b)	Designated fire zones; regions included.		
9	§ 25.1305(a)(7) and (d)(2)	Powerplant instruments (for all airplanes); (for turbojet engine powered airplanes)..		
10	§ 25.1423	Public address system.	02–18	67 FR 70510 11/22/2002
11	§ 25.677	Trim systems.	02–15	67 FR 61836 10/02/2002
12	§ 25.1439	Protective breathing equipment.		
13	§ 25.1141	Powerplant controls; general.	02–08	67 FR 30820 05/08/2002

In these notices you will find a history of the problems and discussions of the safety considerations supporting this rule. You also will find a discussion of the current requirements and why they do not adequately address the problem. The NPRMs refer to the ARAC recommendations upon which we relied in developing the proposed rules. The NPRMs also discuss each alternative that we considered and the reasons for rejecting the ones we did not adopt.

The background material in the NPRMs contains the basis and rationale for this rule and, except where we have specifically expanded on the background elsewhere in this preamble, supports this final rule as if it were contained here. We refer inquiries regarding the intent of the requirements to the background in the NPRMs as though it was in the final rule itself. It is therefore not necessary to repeat the background in this document.

History

Title 14 of the Code of Federal Regulations (CFR) part 25 contains the airworthiness standards for type certification of transport category airplanes. These standards apply to airplanes manufactured within the U.S. for use by U.S. registered operators, and airplanes manufactured in other countries and imported to the U.S. under a bilateral agreement. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the applicable part 25 standards.

Joint Aviation Requirements (JAR)–25 contains the European airworthiness standards for type certification of transport category airplanes. The Joint Aviation Authorities (JAA) of Europe developed these standards, which are based on part 25, to provide a common set of airworthiness standards within the European aviation community. Thirty-seven European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

Although part 25 and JAR–25 are similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial added costs to manufacturers and operators. These added costs, however, often do not bring about an increase in safety.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also preserve the necessary high level of safety, the FAA and the JAA began an effort in 1988 to "harmonize" their respective aviation standards.

After beginning the first steps toward harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures was insufficient to make noticeable progress toward fulfilling the harmonization goal. The FAA identified the ARAC as an ideal vehicle for helping to resolve harmonization issues, and in 1992 the FAA tasked ARAC to undertake the entire harmonization effort.

Despite the work that ARAC has undertaken to address harmonization, there remain a large number of regulatory differences between part 25 and JAR–25. The current harmonization process is costly and time-consuming for industry, the FAA, and the JAA. Industry has expressed a strong desire to complete the harmonization program as quickly as possible to alleviate the drain on their resources and finally to establish one acceptable set of standards.

Recently, representatives of the FAA and JAA proposed an accelerated process to reach harmonization, the "Fast Track Harmonization Program." The FAA initiated the Fast Track Harmonization Program on November 26, 1999. This rulemaking has been identified as a "fast track" project.

Further details on ARAC, and its role in harmonization rulemaking activity, and the Fast Track Harmonization Program can be found in the tasking statement (64 FR 66522, November 26, 1999) and the first NPRM published under this program, Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes (65 FR 36978, June 12, 2000).

Related Activity

The new European Aviation Safety Authority (EASA) was established and formally came into being on September 28, 2003. The JAA worked with the European Commission (EC) to develop a plan to ensure a smooth transition from JAA to the EASA. As part of the transition, the EASA will absorb all functions and activities of the JAA, including its efforts to harmonize JAA regulations with those of the U.S. This rule is a result of the FAA and JAA harmonization rulemaking activities. It adopts the more stringent requirements of the JAR standards. These JAR standards have already been incorporated into the EASA "Certification Specifications for Large Aeroplanes" CS–25, in similar if not identical language. The EASA CS–25 became effective on October 17, 2003.

Discussion of the Comments

Miscellaneous Flight Requirements, RIN 2120–AH39

On January 14, 2002, the FAA published a notice of proposed rulemaking (Notice No. 02–01, 67 FR 1846) entitled "Miscellaneous Flight Requirements." The NPRM proposed to amend five sections of 14 CFR part 25 regarding transport category airplanes miscellaneous flight requirements. The amendments harmonize these standards with the comparable JAR–25 standards. The affected sections are:

§ 25.111(c)(4), "Takeoff path"
§ 25.147(c)(2), "Directional and lateral control"
§ 25.161(c)(2), "Trim (longitudinal)"
§ 25.161(e), "Trim (four or more engines)"
§ 25.175(d), "Static longitudinal stability"

The FAA received one comment in response to the proposed rule. The commenter fully supports the proposal.

On November 26, 2002, the FAA published a final rule (67 FR 70812) entitled, "1-g Stall Speed as the Basis for Compliance With Part 25 of the Federal Aviation Regulations." This final rule amended the airworthiness standards for transport category airplanes to redefine the reference stall speed as a speed not less than the 1-g stall speed, instead of the minimum speed obtained in a stalling maneuver. The rule became effective December 26, 2002.

Included in the amendment were changes to operating speeds in § 25.161(c)(2), and § 25.175(d)(4), to reflect the redefinition of the reference stall speed, specifically:

§ 25.161(c)(2), the expression, "1.4 V_{S1}" revised to read "1.3 V_{SR1}."
§ 25.175(d)(4), the expression, "1.4 V_{S0}" revised to read "1.3 V_{SR0}."

The FAA adopts the changes as proposed in the NPRM, Notice No. 02–01, revised to reflect the reference stall speed adopted by the 1-g stall speed final rule.

Revisions to Various Powerplant Installation Requirements for Transport Category Airplanes, RIN 2120–AH37

On January 31, 2002, the FAA published a Notice of Proposed Rulemaking (Notice No. 02–02, 67 FR 4856) entitled, "Revisions to Various Powerplant Installation Requirements for Transport Category Airplanes." The FAA proposed to amend four sections of 14 CFR part 25 regarding airworthiness standards for powerplant installations on transport category airplanes. The amendments will harmonize these standards with the comparable JAR–25 standards. The affected sections are:

§ 25.945(b)(5) Thrust or power augmentation system
§ 25.973(d) Fuel tank filler connection
§ 25.1181(b) Designated fire zones; regions included
§ 25.1305(a)(7) and (d)(2) Powerplant instruments

General Comments

Three commenters responded including a U.S. airplane manufacturer, a foreign airworthiness authority, and a U.S. industry association representing many groups in the aviation industry. The U.S. airplane manufacturer agreed with the proposed rule without further comment. The other two commenters disagreed with portions of the proposal and provided the following comments and recommendations for change.

Section-by-Section Discussion

Section 25.1181(b) Designated Fire Zones; Regions Included

Comment: One commenter, a foreign airworthiness authority, opposes the inclusion of § 25.863 to the existing cross-reference list contained in § 25.1181(b). The commenter believes the agency is trying to bolster regulatory deficiencies in § 25.1185 "Flammable fluids" by making the general "Flammable fluid fire protection" requirements of § 25.863 applicable to "Designated Fire Zones." The commenter suggests amending § 25.1185 rather than cross-referencing § 25.863 in § 25.1181(b). The commenter states that "a gradual implementation of fire protection measures should be commensurate with hazards." The commenter believes the proposed cross-reference would lessen the distinction between the flammable fluid fire protection provisions required for "Designated Fire Zones" and those required for other flammable fluid leakage zones. The commenter believes that because of this loss of distinction, one could argue that meeting the general objective requirements of § 25.863 provides an equivalent level of safety to meeting the more specific prescriptive requirements of §§ 25.1185 through 25.1203. The commenter provides the following as an example:

"§ 25.863(c) If action is required to prevent or counteract a fluid fire [* * *] quick acting means must be provided to alert the crew."

"§ 25.1203(a) There must be approved, quick acting fire or overheat detectors [* * *] in numbers and locations ensuring prompt detection of fire in those zones."

FAA Reply: The FAA uses the following definitions in our response:

Designated Fire Zone (DFZ). The areas listed in § 25.1181:

- The engine power section;
- Except for reciprocating engines, any complete powerplant compartment in which no isolation is provided between the engine power section and the engine accessory section;
- The engine accessory section;
- The APU compartment;
- Any fuel burning heater (or combustion equipment described in § 25.859);
- The compressor and accessory sections of turbine engines; and
- The combustor, turbine and tailpipe sections of turbine engine installations that contain lines or components carrying flammable fluids.

Fire Zone. A flammable fluid leakage zone that contains a nominal ignition source and is not a DFZ.

Flammable Fluid Leakage Zone. Any area where flammable liquids or vapors are not intended to be present, but where they might exist due to leakage from flammable fluid-carrying components (*e.g.*, leakage from tanks, lines, etc.).

The purpose of the proposal is not to change the applicability of § 25.863 but rather to make it clear that § 25.863, by its wording and nature, is applicable to any area subject to flammable fluid leakage, including DFZs. The requirements of § 25.863 are applicable to DFZs in addition to, not instead of, the requirements of §§ 25.1185 through 25.1203. Consequently, applying the requirements of § 25.863 to DFZs, especially the requirement for a "means to minimize the likelihood of ignition," increases the level of safety. It is neither appropriate nor necessary to repeat this existing, generally applicable requirement in § 25.1185 as proposed by the commenter.

The FAA agrees with the commenter's statement, "a gradual implementation of fire protection measures should be commensurate with hazards." The "minimization" nature of § 25.863 accomplishes this goal. For example, § 25.863 clearly requires more fire protection measures in a fire zone, measures similar to those of a DFZ, than in a flammable fluid leakage zone. The ARAC recently submitted recommended advisory material to the FAA that provides more detailed guidance regarding what "flammable fluid fire protection" is acceptable when demonstrating compliance with §§ 25.863 and 25.1187. The FAA is reviewing this proposed advisory material and may publish a Notice of Availability in the **Federal Register** when the AC is issued.

Changes: No changes were made as a result of this comment.

Section 25.1305(d)(2) Powerplant Instruments

Comment: A U.S. industry association raises concerns about the human factors aspects of the proposed revision to § 25.1305(d)(2), "Powerplant instruments."

The proposed revision, requiring a means to indicate to the flightcrew when the thrust reversing device is not in the selected position, is in addition to the current requirement to indicate when the device is in the reverse thrust position. The commenter does not object to the aspect of the proposed change requiring an indication when the stowed position is selected and the device is not stowed. This accounts for the situation where the device is not completely in the forward thrust position, but has not reached the reverse thrust position either.

This commenter does not find the proposed change requiring an indication that the thrust reverse device is not deployed, although the deployed position is selected, would result in the anticipated safety improvement (enhanced crew awareness). In fact, the commenter contends that such indication may result in a safety reduction because flightcrews are already familiar with existing means used to notify the flightcrew of the condition of the thrust reversing device.

The commenter further notes that many current airplanes include airplane flight manual (AFM) and training procedures specifying that the crew check the reverse thrust position indication to verify reverser deployment. These procedures are also backed-up with a mechanical means that prevents application of reverse thrust above idle until the reverser is deployed. By specifying the need for an additional requirement, the proposed rule change would not allow the use of this method currently used in many airplanes and familiar to flightcrews. This commenter finds there are some safety concerns related to the human factors interaction between the flightcrew and the provision for two different thrust reverser indications. A cockpit indication that the reverser has deployed when commanded and another that it has not deployed as commanded may lead to flightcrew confusion and the potential for inappropriate crew action or response. This is particularly the case when considering previous crew experience and training on similar airplanes that do not incorporate the new indication.

Therefore, this commenter recommends one of the following actions: Conduct human factor studies to evaluate the safety benefits of the proposed change. Revise the proposed change to require an indication only when the forward thrust position is selected and the device is not in the appropriate position.

FAA Reply: The JAR 25.1305(d)(2) was identical with 14 CFR 25.1305(d)(2) until Change 5 of the JAR, dated January 1, 1979. At Change 5, the JAR added the 25.1305(d)(2)(i) requirement to indicate when the thrust reversing device is not in the selected position. During the decades of experience with the JAR requirement, none of the problems mentioned by the commenter have been noted.

The JAA further confirms that this requirement was added to provide more direct, continuous, and effective situational awareness than that

provided by combining the required "deployed" indication and associated AFM procedures. Consequently, relying on the crew to use the lack of a reverser "deployed" indication to establish that the reverser has not deployed as commanded does not meet the intent of the harmonized JAR 25.1305(d)(2)(i) and 14 CFR 25.1305(d)(2)(i) requirement adopted by this rule.

Conversely, the FAA and JAA have agreed the inherent "tactile feedback" provided by traditional reverser/throttle interlock features can be shown to meet the intent of this rule. That is, when the pilot is unable to command reverse thrust above idle, he is inherently and continuously aware when the reverser is not in the selected position.

Changes: No changes were made as a result of this comment.

FAA Disposition of Comments: The FAA adopts the changes as proposed in the NPRM, Notice No. 02–02.

Public Address System, RIN 2120–AH30

On November 22, 2002, the FAA published a Notice of Proposed Rulemaking (Notice No. 02–18, 67 FR 70510) entitled, "Public Address System." The FAA proposed to amend an airworthiness standard for the public address system on transport category airplanes to harmonize the standards with the comparable JAR–25 standards. This amendment requires that the public address system be capable of operation within 3-seconds from the time a microphone is removed from its stowage.

General Comments

The FAA received four comments. All the commenters generally support the proposed changes. These comments include five suggested changes, as discussed below.

Comment 1: The commenter, a U.S. airplane manufacturer, believes that this section, under Miscellaneous Equipment, should address only design compliance requirements. It should not address flight attendant operations. Also, they state the requirement for location and accessibility of the handset is sufficiently covered in § 25.1423(g). They suggest the following change to the language of the rule to clarify the intent of the rule as a design standard:

§ 25.1423(b) Be capable of operation within 3-seconds from the time a microphone is removed from its stowage.

FAA Reply: The FAA agrees with the commenter.

Changes: Section 25.1423(b) is changed to reflect the comment discussed above.

Comment 2: One commenter supports the proposal, but disagrees with the use of "flight crewmember" in the summary of the proposed rule. They believe this excludes the flight attendant, whom the proposed rule change would affect.

FAA Reply: The FAA partially agrees with this comment. The use of "flight crewmember" in the summary of the proposed rule might cause readers to interpret that the rule excludes flight attendants.

Changes: The language in the proposed rule, "* * * after a flight crewmember removes the microphone from its stowage," is changed to read, "* * * from the time a microphone is removed from its stowage," to reflect the comment as discussed above.

Comment 3: One commenter suggests that § 25.1423(g) should read, "at each exit with an adjacent flight attendant seat."

FAA Reply: The FAA does not concur. The commenter's proposed wording would expand the scope of the requirement to non-floor level exits, as well as any exit in excess of the number required when a flight attendant seat was installed next to it. This could actually discourage installation of flight attendant seats since doing so would require Public Address system access. In addition, the intent of this change is to harmonize requirements between the FAA and the JAA, and this proposal would result in a lack of harmonization.

Changes: No changes were made as a result of this comment.

Comment 4: One commenter suggests amending 14 CFR part 121 to reflect similar changes.

FAA Reply: The suggested changes to 14 CFR part 121 are outside the scope of this proposed rule and the fast track harmonization rulemaking activity.

Changes: No changes were made as a result of this comment.

FAA Disposition of Comments: Except as noted previously, the FAA adopts the changes as proposed in the NPRM, Notice No. 02–18.

Trim Systems and Protective Breathing Equipment, RIN 2120–AH40

On October 2, 2002, the FAA published a Notice of Proposed Rulemaking (Notice No. 02–15, 67 FR 61836) entitled, "Trim Systems and Protective Breathing Equipment." The FAA proposed to amend airworthiness standards for transport category airplanes concerning trim systems and protective breathing equipment (PBE). For trim systems, the proposal would establish the minimum design standard. For PBE, the proposal would define design and installation requirements for portable and stationary protective breathing equipment. These amendments would harmonize the airworthiness standards for trim systems and PBE with those of JAR–25.

General Comments

The FAA received five comments in response to the proposal. One commenter supports the proposed rule without further comment. The other commenters generally support the proposed changes. These comments include four suggested changes, as discussed below.

Section-by-Section Discussion

Section 25.677(b) Trim Systems

Comment 1: A U.S. airplane manufacturer suggested removal or clarification of the phrase, "adjacent to trim control." They state the phrase is obsolete for stabilizer trim because most airplanes no longer have mechanical trim wheels and cables.

FAA Reply: We do not agree with the commenter's suggestion. Use of the phrase, "adjacent to trim control," in this regulation, requires the trim indication to be located near the actuation switch where the indication can be readily viewed by the pilot to prevent confusion and unintended operation. The phrase, "adjacent to trim control," used in the broadest sense, means the trim indication must be placed somewhere near the trim actuation switch. The location should allow both trim settings and movement indications to be found easily and viewed by the pilot, in coordination with use of the switch, to prevent confusion and unintended operation.

Changes: No changes were made as a result of this comment.

Comment 2: The commenter suggests we revise the language of the rule to clarify whether the rule is applicable only to stabilizer trim, or to rudder and lateral trim as well. They state the text concerning "safe takeoff range" has traditionally been applied to only stabilizer trim, and not to aileron or rudder trim. However, this is not specified in the proposed rule.

FAA Reply: The FAA does not agree with the commenter's request to clarify the applicability of the rule. The FAA finds that a change is not necessary to clarify the rule. The proposed rule, as written, provides acceptable trim system requirements without providing unnecessary restrictions on future designs. Also, this represents a harmonized position with the JAA rule. The rule addresses all flight control trim systems, not just stabilizer trim. There are two "ranges" specified by the harmonized rule; one being the range of

adjustment for all trim systems (*i.e.*, full range of travel), and the other being the range at which takeoffs have been demonstrated to be safe for the range of center of gravity positions approved for takeoff (*i.e.*, takeoff "green band"). All trims systems must provide a clear, visible means to indicate the position of the trim device with respect to the range of adjustment. A safe takeoff range must be marked on the trim system indicator where it has been demonstrated that takeoff is safe for all center of gravity positions approved for takeoff.

Changes: No changes were made as a result of this comment.

Section 25.1439(a) Protective Breathing Equipment

Comment 3: The commenter suggests adding the language, "other than the flight deck" to paragraph (a) so it reads:

"In addition, portable protective breathing equipment must be installed for the use of appropriate crewmembers for fighting fires in compartments accessible in flight other than the flight deck. This includes isolated * * *"

The commenter believes the additional text clearly specifies the last sentence of proposed § 25.1439(a), which requires protective breathing equipment (PBE) for the maximum number of occupants, does NOT apply to the flight deck. The FAA has previously interpreted this part of the rule as not applying to the flight deck. However, if taken literally, the proposed requirement could apply to the flight deck, thus requiring up to four PBE's on the flight deck; this clearly is not the intent of the rule.

FAA Reply: The FAA agrees with the requested change. The first sentence of § 25.1439(a) applies to the flight deck and the last sentence applies to other compartments and not the flight deck.

Changes: Section 25.1439(a) is changed to reflect the comment discussed above.

Section 25.1439(b)(5) Protective Breathing Equipment

Comment 4: A foreign airplane manufacturer suggests the following revision to the language of § 25.1439(b)(5):

"* * * If a continuous flow open circuit protective breathing system is used, a flow rate of * * * Continuous flow open circuit systems must not increase the ambient oxygen content of the local atmosphere above that of demand systems. If a closed circuit protective breathing system is used, compliance to the performance requirements stated in Technical Standard Order (TSO) C116 for 15 minutes is considered to satisfy the required 15-minute duration at the prescribed altitude and minute volume. BTPD refers to body temperature conditions (that is, 37° C., at ambient pressure, dry)."

This commenter contends that, historically, a larger supply of oxygen was considered necessary when an open circuit continuous flow oxygen mask was used, relative to a demand oxygen mask, because the continuous flow mask has no means to adjust for a momentary inhalation rate that exceeded the continuous flow rate. Accordingly, the continuous flow rate was set higher, so the flow would be sufficient in the event of a momentary excursion.

By contrast, in a closed circuit rebreather system, in principle, the rate at which oxygen must be supplied is not equal to the breathing rate. If the closed circuit device has sufficient reservoir capacity to accommodate the demand for added breathing volume during a momentary excursion, the actual oxygen flow rate required is only the quantity necessary to replace the oxygen that was consumed by metabolic activity or lost through leakage.

In the case of TSO C116 compliant PBE, the user's breathing rate may correspond to 30 liters per minute for 15 minutes or 450 liters BTPD, but the actual oxygen flow required might be only one to two liters per minute normal temperature pressure dry (NTPD). In a closed circuit rebreather, a 600 liter oxygen supply for 15 minutes duration would be equal to a metabolic demand of 40 liters per minute, which is well outside the range of human metabolic capacity, and thus excessive. To the best of the commenter's knowledge, none of the currently certificated TSO C116 compliant portable closed circuit PBE units would be capable of delivering 600 liters of oxygen, but all would readily accommodate a breathing rate of 30 liters per minute BTPD at 8,000 feet pressure altitude.

This commenter believes the proposed language could be interpreted as requiring a closed circuit portable PBE to have an oxygen supply much larger than is necessary.

FAA Reply: The FAA partially concurs with the commenter. The intent of the existing § 25.1439(b)(5) has not changed with the proposed rule. The intent is that the PBE supply protective oxygen of 15 minutes duration per crewmember at a pressure altitude of 8,000 feet with a respiratory minute volume of 30 liters per minute BTPD.

We agree that the portion of the rule that specifies 600 liters of oxygen at 70 °F, and 760 mm. Hg., is only applicable to continuous flow open circuit protective breathing systems.

We do not agree that it is appropriate to reference the TSO C116 in the regulation. The TSO may change in the future and may not remain compatible with the part 25 regulations. Also, we do not agree that it is necessary to restrict the requirement to not increase the ambient oxygen content of the local atmosphere to only continuous flow open circuit systems. If a continuous flow system does not allow oxygen into the local atmosphere it would comply with the regulation.

Changes: To reflect the comment of this commenter, as discussed above, section 25.1439(b)(5) is changed to read:

"* * * If a continuous flow open circuit protective breathing system is used, a flow rate of 60 liters per minute * * *"

FAA Disposition of Comments: Except as noted previously, the FAA adopts the changes as proposed in the NPRM, Notice No. 02–15.

Powerplant Controls on Transport Category Airplanes, General, RIN 2120–AH65

On May 8, 2002, the FAA published a Notice of Proposed Rulemaking (Notice No. 02–08, 67 FR 30820) entitled, "Powerplant Controls on Transport Category Airplanes, General." The FAA proposed to amend airworthiness standards for transport category airplanes concerning design requirements for powerplant valves controlled from the flight deck. The proposed rule would clarify the requirements for a means to select the intended position of the valve, to indicate the selected position, and to indicate if the valve has not attained the selected position. These amendments would harmonize the airworthiness standards for trim systems and PBE with those of JAR–25.

One commenter, a U.S. airplane manufacturer, responded to the proposed rule. The commenter includes two suggested changes, discussed below.

Section 25.1141(f) Powerplant Controls; General

Comment 1: The commenter states that proposed § 25.1141(f), as written, would require the "valve controls to provide the means" to the flightcrew. They suggest it should be revised to allow for an "independent means" to provide indication to the flightcrew. Also, they contend the wording, "* * * provide the flightcrew the means to indicate, * * *" is misleading. They suggest it should be revised to require

"a means to indicate to the flightcrew: * * *"

FAA Reply: The FAA agrees with the intent of the comment.

Changes: Section 25.1141(f) is being changed to read as follows:

(f) For powerplant valve controls located in the flight deck there must be a means for the flightcrew to select each intended position or function of the valve; and to indicate to the flightcrew: the selected position or function of the valve; and, when the valve has not responded as intended to the selected position or function.

Section 25.1141(f)(1) Powerplant Controls: General

Comment 2: The commenter suggests the deletion of § 25.1141(f)(1). They state that if paragraph (f) is revised according to their previous comment, proposed paragraph (f)(1) would be redundant to other parts of § 25.1141. They also suggest that, although it is acceptable to have redundant information in a regulation, the existing first paragraph of § 25.1141 more completely defines the requirement than does proposed paragraph (f)(1).

FAA Reply: The existing first paragraph of § 25.1141 requires "each powerplant control" be located, arranged, designed and marked in accordance with certain referenced general standards for "cockpit controls." Neither this paragraph, nor the other standards it references would directly require powerplant valve controls located in the flight deck to provide the flightcrew with means to select each intended position or function of the valve as does the proposed revised section (f)(1). Consequently, the proposed rule is neither redundant nor does the existing first paragraph more completely define the requirement.

Changes: No changes were made as a result of this comment.

FAA Disposition of Comment: Except as noted previously, the FAA adopts the changes as proposed in the NPRM, Notice No. 02–08.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, 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 by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined that this final rule:

1. Has benefits that do justify its costs, is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures;

2. Will not have a significant economic impact on a substantial number of small entities;

3. Will not reduce barriers to international trade; and

4. Does not impose an unfunded mandate on state, local, or tribal governments, or the private sector.

These analyses, available in the docket, are summarized below.

The (DOT) Order 2100.5, "Regulatory Policies and Procedures," prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the regulation. We provide the basis for this minimal impact determination below. We received no comments that conflicted with the economic assessment of minimal impact published in the notices of proposed rulemaking for this action. Given the reasons presented below, and the fact that no comments were received to the contrary, we have determined that the expected impact of this rule is so minimal that the final rule does not warrant a full evaluation.

Currently, airplane manufacturers must satisfy both the 14 CFR and the European JAR requirements to certificate transport category airplanes in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane, often with no increase in safety. In the interest of fostering international trade, lowering the cost of aircraft development, and making the certification process more efficient, the FAA, JAA, and aircraft manufacturers have been working to create a single set of certification requirements accepted in both the United States and Europe. These efforts are referred to as harmonization. This final rule results from the FAA's acceptance of ARAC harmonization working group recommendations. Members of the ARAC working groups agreed that the requirements of this rule will not impose additional costs to U.S. manufacturers of part 25 airplanes.

Specifically, this rule requires:

1. Revising §§ 25.111, 25.147, 25.161, and 25.175 to incorporate the more stringent requirements currently in those same sections of JAR–25;

2. Revising §§ 25.945, 25.973, 25.1181, and 25.1305 to meet the more stringent requirements of the parallel JAR;

3. Revising § 25.1423 to require that the public address system must be capable of operation within 3-seconds from the time a microphone is removed from its stowage;

4. Revising § 25.677 and 25.1439 to establish the minimum design standard for trim systems, to define design and installation requirements for portable and stationary protective breathing equipment, to eliminate the regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements (JAR) of Europe; and,

5. Revising § 25.1141 to clarify the requirements for a means to select the intended position of the valve, and to indicate if the valve has not attained the selected position, for powerplant valves controlled from the flight deck.

Because this rule will not reduce or increase the requirements beyond those already met by U.S. manufacturers to satisfy European airworthiness standards, we have determined there will be no cost associated with this rule to part 25 manufacturers. We have not tried to quantify the benefits of this amendment beyond identifying the expected harmonization benefit. This amendment eliminates an identified significant regulatory difference (SRD) between part 25 and JAR–25 wording. Eliminating the SRD will provide for a more consistent interpretation of the rules and thus is an element of the potentially large cost savings of harmonization.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a "significant economic impact on a substantial number of small entities" as they are defined in the Act.

If we find that the action will have a significant impact, we must do a "regulatory flexibility analysis." If, however, we find that the action will not have a significant economic impact on a substantial number of small entities, we are not required to do the analysis. In this case, the Act requires that we include a statement that provides the factual basis for our determination.

We have determined that this amendment will not have a significant economic impact on a substantial number of small entities for two reasons:

First, the net effect of the rule is regulatory cost relief. The amendment requires that new transport category airplane manufacturers meet just the "more stringent" European certification requirement, rather than both the United States and European standards. Airplane manufacturers already meet this standard, as well as the existing part 25 requirement.

Second, all United States manufacturers of transport category airplanes exceed the Small Business Administration small entity criteria of 1,500 employees for airplane manufacturers. Those U.S. manufacturers include: The Boeing Company, Cessna Aircraft Company, Gulfstream Aerospace, Learjet (owned by Bombardier Aerospace), Lockheed Martin Corporation, McDonnell Douglas (a wholly owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation.

The FAA received no comments that differed with the assessment given in this section. Since this final rule is minimally cost-relieving and there are no small entity manufacturers of part 25 airplanes, the FAA Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in 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. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this rulemaking and has determined that it is consistent with the statute's requirements by using European international standards as the basis for U.S. standards and supports the Administration's policy on free trade.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

What Other Assessments Has the FAA Conducted?

Paperwork Reduction Act

Under the provisions of the Paperwork Reduction Act of 1995, there are no current or new requirements for information collection associated with this final rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this final rule applies to the certification of future designs of transport category airplanes and their subsequent operation, it could affect intrastate aviation in Alaska. Because no comments were received regarding this regulation affecting intrastate aviation in Alaska, we will apply the rule in the same way that it is being applied nationally.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

- Are the requirements clearly stated?
- Do the regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the regulations?

Please send your comments to the address specified in the **FOR FURTHER INFORMATION CONTACT** section.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this rulemaking under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the

executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 25 of title 14, Code of Federal Regulations as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 25 continues to read as follows:

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

■ 2. Amend § 25.111 by revising paragraph (c)(4) to read as follows:

§ 25.111 Takeoff path.

* * * * *

(c)* * *

(4) Except for gear retraction and automatic propeller feathering, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

* * * * *

■ 3. Amend § 25.147 by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), and by adding a new paragraph (d) to read as follows:

§ 25.147 Directional and lateral control.

* * * * *

(d) Lateral control; roll capability. With the critical engine inoperative, roll response must allow normal maneuvers. Lateral control must be sufficient, at the speeds likely to be used with one engine inoperative, to provide a roll rate necessary for safety without excessive control forces or travel.

* * * * *

■ 4. Amend § 25.161 by revising paragraph (c)(2), and by revising paragraph (e) as follows:

§ 25.161 Trim.

* * * * *

(c) * * *

(2) Either a glide with power off at a speed not more than 1.3 V_{SR1}, or an approach within the normal range of approach speeds appropriate to the weight and configuration with power settings corresponding to a 3 degree glidepath, whichever is the most severe, with the landing gear extended, the wing flaps (i) retracted and (ii) extended, and with the most unfavorable combination of center of gravity position and weight approved for landing; and

* * * * *

(e) Airplanes with four or more engines. Each airplane with four or more engines must also maintain trim in rectilinear flight with the most unfavorable center of gravity and at the climb speed, configuration, and power required by § 25.123(a) for the purpose of establishing the en route flight paths with two engines inoperative.

* * * * *

■ 5. Amend § 25.175 by revising paragraph (d)(4) to read as follows:

§ 25.175(d) Demonstration of static longitudinal stability.

* * * * *

(d) * * *

(4) The airplane trimmed at 1.3 V_{SR0} with—

(i) Power or thrust off, and

(ii) Power or thrust for level flight.

* * * * *

■ 6. Amend § 25.677 by revising paragraph (b) to read as follows:

§ 25.677 Trim systems.

* * * * *

(b) There must be means adjacent to the trim control to indicate the direction of the control movement relative to the airplane motion. In addition, there must be clearly visible means to indicate the position of the trim device with respect to the range of adjustment. The indicator must be clearly marked with the range within which it has been demonstrated that takeoff is safe for all center of gravity positions approved for takeoff.

* * * * *

■ 7. Add a new paragraph (b)(5) to § 25.945 to read as follows:

§ 25.945 Thrust or power augmentation system.

* * * * *

(b) * * *

(5) Each tank must have an expansion space of not less than 2 percent of the tank capacity. It must be impossible to fill the expansion space inadvertently with the airplane in the normal ground attitude.

* * * * *

■ 8. Republish the introductory text and revise paragraph (d) of § 25.973 to read as follows:

§ 25.973 Fuel tank filler connection.

Each fuel tank filler connection must prevent the entrance of fuel into any part of the airplane other than the tank itself. In addition—

* * * * *

(d) Each fuel filling point must have a provision for electrically bonding the airplane to ground fueling equipment.

■ 9. Amend section 25.1141 by revising paragraph (f) to read as follows:

§ 25.1141 Powerplant controls: general.

* * * * *

(f) For powerplant valve controls located in the flight deck there must be a means:

(1) For the flightcrew to select each intended position or function of the valve; and

(2) To indicate to the flightcrew:

(i) The selected position or function of the valve; and

(ii) When the valve has not responded as intended to the selected position or function.

■ 10. Revise paragraph (b) of § 25.1181 to read as follows:

§ 25.1181 Designated fire zones; regions included.

* * * * *

(b) Each designated fire zone must meet the requirements of §§ 25.863, 25.865, 25.867, 25.869, and 25.1185 through 25.1203.

■ 11. Republish the introductory text and revise paragraphs (a)(7) and (d)(2) of § 25.1305 to read as follows:

§ 25.1305 Powerplant instruments.

The following are required powerplant instruments:

(a) * * *

(7) Fire-warning devices that provide visual and audible warning.

* * * * *

(d) * * *

(2) A position indicating means to indicate to the flightcrew when the thrust reversing device—

(i) Is not in the selected position, and

(ii) Is in the reverse thrust position, for each engine using a thrust reversing device.

* * * * *

■ 12. Amend § 25.1423 by republishing the introductory text and revising the text of paragraph (b) to read as follows:

§ 25.1423 Public address system.

A public address system required by this chapter must—

* * * * *

(b) Be capable of operation within 3 seconds from the time a microphone is removed from its stowage.

* * * * *

■ 13. Revise § 25.1439 to read as follows:

§ 25.1439 Protective breathing equipment.

(a) Fixed (stationary, or built in) protective breathing equipment must be installed for the use of the flightcrew, and at least one portable protective breathing equipment shall be located at or near the flight deck for use by a flight crewmember. In addition, portable protective breathing equipment must be installed for the use of appropriate crewmembers for fighting fires in compartments accessible in flight other than the flight deck. This includes isolated compartments and upper and lower lobe galleys, in which crewmember occupancy is permitted during flight. Equipment must be installed for the maximum number of crewmembers expected to be in the area during any operation.

(b) For protective breathing equipment required by paragraph (a) of this section or by the applicable Operating Regulations:

(1) The equipment must be designed to protect the appropriate crewmember from smoke, carbon dioxide, and other harmful gases while on flight deck duty or while combating fires.

(2) The equipment must include—

(i) Masks covering the eyes, nose and mouth, or

(ii) Masks covering the nose and mouth, plus accessory equipment to cover the eyes.

(3) Equipment, including portable equipment, must allow communication with other crewmembers while in use. Equipment available at flightcrew assigned duty stations must also enable the flightcrew to use radio equipment.

(4) The part of the equipment protecting the eyes shall not cause any appreciable adverse effect on vision and must allow corrective glasses to be worn.

(5) The equipment must supply protective oxygen of 15 minutes duration per crewmember at a pressure altitude of 8,000 feet with a respiratory minute volume of 30 liters per minute BTPD. The equipment and system must be designed to prevent any inward leakage to the inside of the device and prevent any outward leakage causing significant increase in the oxygen content of the local ambient atmosphere. If a demand oxygen system is used, a supply of 300 liters of free oxygen at 70° F. and 760 mm. Hg. pressure is considered to be of 15-minute duration at the prescribed altitude and minute volume. If a continuous flow open circuit protective breathing system is used, a flow rate of 60 liters per minute at 8,000 feet (45 liters per minute at sea level) and a supply of 600 liters of free oxygen at 70° F. and 760 mm. Hg. pressure is considered to be of 15-minute duration at the prescribed altitude and minute volume. Continuous flow systems must not increase the ambient oxygen content of the local atmosphere above that of demand systems. BTPD refers to body temperature conditions (that is, 37° C., at ambient pressure, dry).

(6) The equipment must meet the requirements of § 25.1441.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15117 Filed 7–1–04; 8:45 am]

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Federal Register

Friday,
July 2, 2004

Part VI

The President

**Memorandum of June 29, 2004—
Administration of Certain Appropriations
Relating to Iraq**

Federal Register
Vol. 69, No. 127
Friday, July 2, 2004

Presidential Documents

Title 3—

The President

Memorandum of June 29, 2004

Administration of Certain Appropriations Relating to Iraq

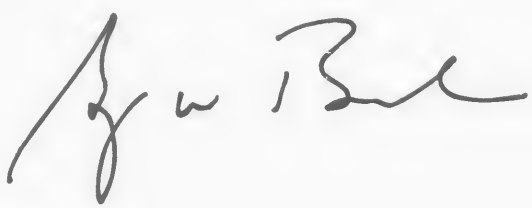
Memorandum for the Secretary of State[,] the Secretary of Defense[, and] the Director of the Office of Management and Budget

By the authority vested in me by the Constitution and the laws of the United States of America, including section 632 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2392), I hereby direct as follows:

1. The unobligated balances as of the end of June 30, 2004, of the funds appropriated to the President under the heading, "Operating Expenses of the Coalition Provisional Authority," in the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106) and any funds appropriated to the President under that heading in any Act enacted subsequent to Public Law 108–106 are transferred to the Secretary of State. Such amounts shall exclude those made available to the Inspector General of the Coalition Provisional Authority, and the amount reapportioned to "Operating Expenses of the Coalition Provisional Authority" on June 25, 2004. The Secretary of State shall ensure use of such funds in a manner consistent with Presidential guidance concerning United States Government operations in Iraq.

2. Effective at the end of June 30, 2004, this memorandum supersedes paragraph 1 of the Presidential Memorandum entitled, "Transfer of Funds Appropriated to the President under the heading Operating Expenses of the Coalition Provisional Authority, and Delegation of the Functions of the President under the heading Iraq Relief and Reconstruction Fund, in the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004" (December 5, 2003).

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 29, 2004.

[FR Doc. 04–15296
Filed 7–1–04; 9:21 am]
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Vol. 69, No. 127

Friday, July 2, 2004

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