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9–14–04 Tuesday
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04–045–1]

Citrus Canker; Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the citrus canker regulations by updating the list of areas in the State of Florida quarantined because of citrus canker. To reflect the detection of citrus canker in an area adjacent to but outside of one current quarantined area in Florida, as well as in eight additional counties, we are expanding the boundaries of one existing quarantined area and adding several new areas to the list of quarantined areas. We are also removing portions of three counties from the list of quarantined areas because regular surveys have shown them to have been free of citrus canker for at least 2 years. These actions are necessary to prevent the spread of citrus canker into noninfested areas of the United States and to relieve restrictions that are no longer warranted.

DATES: This interim rule is effective September 14, 2004. We will consider all comments that we receive on or before November 15, 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. 04–045–1, 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. 04–045–1.
- *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. 04–045–1" 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: Ms. Lynn Evans-Goldner, Assistant Staff Officer, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1236, (301) 734–7228.

Background

Citrus canker is a plant disease that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family *Rutaceae*). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which render the fruit unmarketable, and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

The regulations to prevent the interstate spread of citrus canker are contained in 7 CFR 301.75–1 through 301.75–16 (referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide for the designation of survey areas around quarantined areas. Survey areas undergo close monitoring by Animal and Plant Health Inspection Service (APHIS) and State inspectors for citrus canker and serve as buffer zones against the disease.

Under § 301.75–4(c) of the regulations, any State or portion of a State where an infestation is detected will be designated as a quarantined area and will retain that designation until the area has been free from citrus canker for 2 years.

Paragraph (d) of § 301.75–4 provides that less than an entire State will be designated as a quarantined area only if certain conditions are met. The State must, with certain specified exceptions, enforce restrictions on the intrastate movement of regulated articles from the quarantined area that are at least as stringent as those being enforced on the interstate movement of regulated articles from the quarantined area. The State must also undertake the destruction of all infected plants and trees. Under the regulations in § 301.75–6(c), within 7 days after confirmation that a plant or tree is infected, the State must provide written notice to the owner that the plant or tree must be destroyed. The owner then has 45 days in which to destroy the infected plant or tree. These State-conducted eradication activities within quarantined areas are an integral element of a cooperative State/Federal citrus canker program that, when successfully completed, will result in the eradication of citrus canker and the removal of an area's designation as a quarantined area.

Quarantined Areas

New infestations of citrus canker have been detected on properties adjacent to

but outside of one current quarantined area in Florida, as well as in eight additional counties within the State. Therefore, we are expanding the quarantined area in Broward and Miami-Dade Counties to include parts of Monroe and Palm Beach Counties, and adding quarantined areas in DeSoto, Hendry, Highlands, Lee, Manatee, Orange, Palm Beach, and Sarasota Counties. The State of Florida has placed these new areas under State quarantine and is enforcing restrictions on the intrastate movement of regulated articles from these quarantined areas. We have determined that Florida's restrictions on the intrastate movement of regulated articles from the quarantined areas are at least as stringent as those on the interstate movement of regulated articles from the quarantined areas. Therefore, as provided in § 301.75–4(d), we are designating areas less than the entire State as quarantined areas. An exact description of the quarantined areas can be found in the rule portion of this document.

Areas Removed From Quarantine

In this interim rule, we are removing portions of Collier, Hendry, and Manatee Counties from the list of quarantined areas. As previously noted, the regulations provide that any State or portion of a State where an infestation is detected will be designated as a quarantined area and will retain that designation until the area has been free from citrus canker for 2 years. Regular and complete surveys of each of the areas we are removing from the list of quarantined areas have been conducted approximately every 90 days over a period of at least 2 years since citrus canker was first detected. The areas have been free of citrus canker for a period of at least 2 years and may thus be removed from the list of quarantined areas.

The necessary surveys for citrus canker have been conducted by APHIS and State inspectors, including surveys of citrus trees located in both commercial groves and at residential properties. In addition, any wild citrus known to be present in the area has also been surveyed. Although not required as a condition of declaring eradication in an area, in this case all abandoned citrus orchards have also been removed. Abandoned citrus groves present a challenge in conducting surveys; thus the removal of these groves increases our confidence that citrus canker is no longer present in this area.

Therefore, we are amending the regulations by removing the Sunniland North area in Collier County, FL, the Seminole East and West and Siboney areas in Hendry County, FL, and the Bradenton area of Manatee County, FL, from the list of quarantined areas in § 301.75–4(a). This action removes restrictions on the interstate movement of regulated articles from and through these areas of Florida.

Immediate Action

Immediate action is necessary to help prevent the spread of citrus canker to noninfected areas of the United States. This rule will also remove restrictions on the interstate movement of regulated articles from the portions of Collier, Hendry, and Manatee Counties, FL, that we are removing from the list of quarantined areas. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the citrus canker regulations by updating the list of areas in the State of Florida quarantined because of citrus canker. Due to detections of citrus canker adjacent to but outside of one current quarantined area in Florida, as well as in eight additional counties, we are expanding the boundaries of some existing quarantined areas and adding new areas to the list of quarantined areas. We are also removing portions of three counties from the list of quarantined areas because regular surveys have shown them to have been free of citrus canker for at least 2 years. These actions are necessary to prevent the spread of citrus canker into noninfested areas of the United States and to relieve restrictions that are no longer warranted.

Economic Analysis

Changes in the list of quarantined areas have the potential to affect marketing opportunities; however, previous analyses of changes to the regulations by adding or removing areas from quarantine have not found any measurable effect on producers or consumers.

In an interim rule published in the **Federal Register** on September 5, 2000 (65 FR 53528–53531, Docket No. 00–036–1), we amended the regulations by expanding existing quarantined areas and establishing new quarantined areas. This action represented a significant increase in the quarantined area at the time; however, it did not result in any measurable impact on producers or consumers.

In an interim rule published in the **Federal Register** on May 8, 2002 (67 FR 30769–30771, Docket No. 02–029–1), we amended the regulations by removing a 41-square-mile portion of Manatee County, FL, from the list of quarantined areas. This action did not result in any measurable impact on producers or consumers.

The presence of citrus canker in Florida threatens the citrus industry not only in Florida, but in potentially all U.S. citrus producing areas. Governmental involvement in eradicating a disease outbreak such as citrus canker benefits the unaffected industry in the United States. Citrus growers in the areas currently affected also benefit from the eradication of the disease. Without government-sponsored quarantine and eradication programs, it is unlikely that affected individuals on their own could or would provide sufficient control to prevent the spread of the disease. A recent University of Florida study (Hodges, *et al.*, Economic Information Report 01–2, July 2001) estimated the value of Florida citrus to be $3.58 billion in sales of citrus juice and processed citrus products, and $494 million in sales of fresh citrus fruit. The value of total economic activities associated with the citrus industry was estimated to be $9.13 billion. Establishment of citrus canker in Florida would result in an estimated direct cost to the citrus industry of about $100 million per year. An estimated 140,000 acres of trees valued at $148 million would be abandoned. Loss of exports to countries that would not accept fruit from an area with citrus canker is estimated to be at least $55 million per year.

While it is theoretically possible that additions to a quarantined area could have an adverse effect on a producer within the quarantined area, the costs that would be imposed on the industry as a whole if the disease were to spread greatly outweigh the short-term costs incurred by those producers in a new quarantined area. The areas affected by

this quarantine are small relative to the whole of the Florida citrus industry and therefore are unlikely to have any measurable impact.

Trees found to be positive for citrus canker in residential areas also lead to quarantine measures. Quarantines that encompass residential areas would not lead to an impact on commercial producers. The costs to the government of implementing and maintaining the quarantined areas are small compared to the benefits associated with preventing the further spread of this disease. In addition to more losses to producers, the spread of citrus canker would entail more Federal and State spending for eradication and compensation programs.

Impact on Small Entities

Most of the citrus producers in and around the quarantined area would qualify as small businesses under Small Business Administration (SBA) guidelines. The Regulatory Flexibility Act requires that Agencies specifically consider the economic effects associated with their rules on small entities. The SBA defines a firm engaged in agriculture as "small" if it has less than $750,000 in annual receipts.

Citrus producers in areas released from the quarantine will have greater choice of where to market their fruit. This will benefit producers by providing them with more alternatives. The benefits of removing the quarantine on an area, while positive, are likely to be small. Likewise, the effect of adding an area to a quarantine is also likely to be too small to measure through changes in producer or consumer surplus measures. Producer income or expenses are unlikely to be affected in a measurable way.

Removing areas from quarantine will not impose any costs on producers or on government entities. Adding areas to the quarantine may reduce marketing opportunities for some growers. The costs to the industry if citrus canker were to spread throughout Florida would potentially be very high.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact were prepared in April 1999 for the citrus canker eradication program. We have reviewed the environmental assessment and finding of no significant impact in light of the amendments made by this rule to the list of quarantined areas and have determined that the analysis and conclusions in those documents are still applicable. The assessment provides a basis for the conclusion that implementation of the citrus canker eradication program will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/enviro_docs/cc.html*. Copies of the environmental assessment and finding of no significant impact are also available for public inspection in our reading room. (Information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this interim rule). In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

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

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.75–4, paragraph (a) is revised to read as follows:

§ 301.75–4 Quarantined areas.

(a) The following States or portions of States are designated as quarantined areas:

Florida

Broward, Miami-Dade, Monroe, and Palm Beach Counties. That portion of the counties bounded by a line drawn as follows: Beginning in Monroe County at the southeasternmost point of Key West; then northeast along the eastern side of the Florida Keys and north along the Atlantic coastline of Dade and Broward Counties to the Broward/Palm Beach County line; then north along the Atlantic coastline of Palm Beach County to the north end of Atlantic Dunes Park in Highland Beach in sec. 33, T. 46 S., R. 43 E.; then west to the Intracoastal Waterway; then south along the Intracoastal Waterway to the inlet of the C–15 Canal; then west along the C–15 Canal to Interstate 95; then south and southwest on Interstate 95 to Glades Road (State Road 808); then west on Glades Road (State Road 808) to the southeastern corner of sec. 15, T. 47 S., R. 41 E.; then west along the southern boundary of sec. 15, T. 47 S., R. 41 E. to the L–40 Canal; then west, southwest, and south along the L–40 Canal, crossing the Palm Beach/Broward County line, to the Sawgrass Expressway (State Road 869); then south on the Sawgrass Expressway (State Road 869) to Interstate 75; then west on Interstate 75 to U.S. Highway 27; then south on U.S. Highway 27 to Krome Avenue (NW. and SW. 177th Avenue); then southwest and south on Krome Avenue (NW. and SW. 177th Avenue) to U.S. Highway 41 (SW. 8th Street); then west on U.S. Highway 41 (SW. 8th Street) to the northwestern corner of sec. 11, T. 54 S., R. 38 E.; then south along the western boundaries of secs. 11, 14, 23, 26, 35, and 52, T. 54 S., R. 38 E. and secs. 2 and 11, T. 55 S., R. 38 E. to the southwestern corner of sec. 11, T. 55 S., R. 38 E.; then west along the northern boundaries of secs. 15 and 16, T. 55 S., R. 38 E. to the northwestern corner of

sec. 16, T. 55 E., R. 38 E.; then south along western boundaries of secs. 16, 21, 28, and 33, T. 55 S., R. 38 E. and sec. 4, T. 56 S., R. 38 E. to the southwestern corner of sec. 4, T. 56 S., R. 38 E.; then west along the northern boundaries of secs. 8 and 7, T. 56 S., R. 38 E. to northwestern corner of sec. 7, T. 56 S., R. 38 E.; then south along the western boundaries of secs. 7, 18, 19, 30, and 31, T. 56 S., R. 38 E. to the southwestern corner of sec. 31, T. 56 S., R. 38 E.; then east along the southern boundary of sec. 31, T. 56 S., R. 38 E. to the L–31 N Canal; then south along the L–31 N Canal to the southwestern corner of sec. 8, T. 58 S., R. 38 E.; then south along the western boundaries of secs. 17, 20, 29, and 32, T. 58 S., R. 38 E. and secs. 5, 8, and 17, T. 59 S., R. 38 E. to the eastern boundary of the Everglades National Park; then east along the eastern boundary of the Everglades National Park to U.S. Highway 1; then southeast on U.S. Highway 1 to Jew Fish Creek at the Florida Keys; then south along the western shoreline of the Florida Keys to the southeasternmost point of Key West, the point of beginning.

DeSoto County. (1) DeSoto A quarantined area. That portion of the county bounded by a line drawn as follows: Beginning at the northeastern corner of sec. 22, T. 37 S., R. 25 E.; then south along the eastern boundaries of secs. 22 and 27, T. 37 S., R. 25 E. to Whiddon Branch; then south and southwest along Whiddon Branch to the southern boundary of sec. 27, T. 37 S., R. 25 E.; then west along the southern boundary of secs. 27 and 28, T. 37 S., R. 25 E.; then north along the western boundaries of secs. 28 and 21, T. 37 S., R. 25 E.; then east along the northern boundaries of secs. 21 and 22, T. 37 S., R. 25 E. to the point of beginning.

(2) DeSoto B quarantined area. That portion of the county bounded by a line drawn as follows: Beginning at the northeastern corner of sec. 16, T. 37 S., R. 26 E.; then south along the eastern boundary of sec. 16, T. 37 S., R. 26 E. to the southeastern corner of sec. 16, T. 37 S., R. 26 E.; then west along the southern boundary of sec. 16, T. 37 S., R. 26 E. for approximately 0.5 mile; then south into sec. 21, T. 37 S., R. 26 E. for approximately 0.5 mile; then west through secs. 21, 20, and 19, T. 37 S., R. 26 E. to the western boundary of sec. 19, T. 37 S., R. 26 E.; then north along the western boundaries of secs. 19 and 18, T. 37 S., R. 26 E. to the northeastern corner of sec. 18, T. 37 S., R. 26 E.; then east along the northern boundaries of secs. 18, 17, and 16, T. 37 S., R. 26 E. to the point of beginning.

(3) DeSoto C quarantined area. That portion of the county bounded by a line drawn as follows: Beginning at the northwestern corner of sec. 2, T. 38 S., R. 25 E.; then east along the northern boundary of sec. 2, T. 38 S., R. 25 E. to Walston Avenue; then south on Walston Avenue to Joshua Creek; then south and southwest along Joshua Creek to a point approximately 0.5 mile into sec. 9, T. 38 S., R. 25 E.; then north from that point through secs. 9 and 4, T. 38 S., R. 25 E. to the northern boundary of sec. 4, T. 38 S., R. 25 E.; then east along the northern boundary of sec. 4, T. 38 S., R. 25 E. to the southwestern corner of sec. 34, T. 37 S., R. 25 E.; then north along the western boundary of sec. 34, T. 37 S., R. 25 E. for approximately 0.25 mile; then east to the eastern boundary of sec. 34, T. 37 S., R. 25 E.; then south to the northwestern corner of sec. 2, T. 38 S., R. 25 E., the point of beginning.

(4) DeSoto D quarantined area. That portion of the county bounded by a line drawn as follows: Beginning at the northeastern corner of sec. 7, T. 38 S., R. 26 E.; then west along the northern boundary of sec. 7, T. 38 S., R. 26 E. to State Road 760; then north on State Road 760 to Joshua Creek; then west and southwest along Joshua Creek to the point where it intersects the northern boundary of sec. 12, T. 38 S., R. 25 E.; then south from that point to State Road 760; then southwest on State Road 760 to the western boundary of sec. 12, T. 38 S., R. 25 E.; then south along the western boundaries of secs. 12 and 13, T. 38 S., R. 25 E.; then east along the southern boundaries of secs. 13 and 18, T. 38 S., R. 26 E.; then north along the eastern boundaries of secs. 18 and 7, T. 38 S., R. 26 E. to the point of beginning.

Hendry County. (1) Sears quarantined area. That portion of the county bounded by a line drawn as follows: Beginning at the northeastern corner of Multiblocks (MB) 69, 70, 92, 98, and 154 in sec. 9, T. 44 S., R. 30 E.; then south to the northwestern corner of MB 16, 37, 46, 64, and 91; then east to the northeastern corner of MB 16, 37, 46, 64, and 91; then south to the southern boundary of MB 4, 46, 81, 84, 101, and 164; then west to the southeastern corner of MB 3, 45, 97, and 123; then south to the southern boundary of MB 4, 9, 21, 54, and 55 in sec. 16, T. 44 S., R. 30 E.; then west to the southwestern corner of MB 8, 22, 23, 39, 46, and 53; then southwest across Goodno Canal to the southeastern corner of MB 12, 15, 33, 36, 44, 45, and 82 in sec. 17, T. 44 S., R. 30 E.; then west to the southwestern corner of MB 10, 20, 48, 49, and 83; then north to the southern boundary of MB 30, 58, and 98 in sec. 8, T. 44 S., R. 30 E.; then west to a point on the southern boundary of MB 32, 57, 88, and 100 at longitude N. 26.66013, latitude W. -81.35380; then north to the southern boundary of MB 1, 39, 54, 70, and 124; then east to the southwestern corner of MB 16, 40, 55, 71, and 123; then north to the northwestern corner of MB 16, 40, 55, 71, and 123; then east to the northeastern corner of MB 3, 14, 52, 68, and 97; then northeast across the Goodno Canal to the northwestern corner of MB 12, 61, 67, 115, 116, 117, and 155 in sec. 9, T. 44 S., R. 30 E.; then east to the point of beginning.

(2) West Hendry quarantined area. That portion of the county described as follows: All of secs. 7, 8, 18, and 17, T. 47 S., R. 31 E.

Highlands County. Naranja quarantined area. That portion of the county described as follows: All of sec. 36, T. 36 S., R. 32 E.; secs. 31 and 32, T. 36 S., R. 33 E.; secs. 1, 12, and 13, T. 37 S., R. 32 E.; and secs. 6, 5, 4, 7, 8, 9, 18, 17, 16, 15, 21, and 22, T. 37 S., R. 33 E.

Highlands/De Soto Counties. Venus quarantined area. That portion of the county bounded by a line drawn as follows: Beginning in sec. 18, T. 39 S., R. 28 E. at the northwestern corner of SF Block A–1 on 11 Mile Grade Road; then south on 11 Mile Grade Road to Betty Drive; then west on Betty Drive to the northwestern corner of SP Block 111; then south along the western boundaries of SP Blocks 111, 109, 107, 105, 103, 101 to the southwestern corner of SP Block 101; then east along the southern boundaries of SP Blocks 101 and 102 to the southeastern corner of SP Block 102; then east along SP Block 102 to 11 Mile Grade Road; then south on 11 Mile Grade Road to the southwestern corner of SF Block L–1; then east along the southern boundaries (along canal) of SF Blocks L–1, L–2, L–3, and L–4 to the southeastern corner of SF Block L–4; then north along the eastern boundaries of SF Blocks L–4, K–4, J–4, and I–4 to the northeastern corner of SF Block I–4; then north through the retention pond to the southeastern corner of SF Block D–4 in sec. 16, T. 39 S., R. 28 E.; then north along the eastern boundaries of SF Blocks D–4 and C–4 to the northeastern corner of SF Block C–4; then west along the northern boundary of SF Block C–4 to the retention pond; then north along the western boundaries of SF Blocks B–5 and A–5 to the northern boundary of sec. 17, T. 39 S., R. 28 E.; then west along the northern boundaries of SF Blocks A–3, A–2, and A–1 to 11 Mile Grade Road, the point of beginning.

Lee County. (1) Cape Coral quarantined area. That portion of the county bounded by a line drawn as

follows: Beginning at the intersection of the western shoreline of the Caloosahatchee River and the Plato Canal; then west along the Plato Canal to Del Prado Boulevard; then north on Del Prado Boulevard to northern side of 3616 Del Prado Boulevard; then west along the property line of 3616 Del Prado Boulevard to the Groton Canal; then west along the Groton Canal to the Rubicon Canal; then north along the Rubicon Canal to the Allegro Canal; then west along the Allegro Canal to 3523 Country Club Boulevard; then west along the southern side of 3523 Country Club Boulevard to Country Club Boulevard; then south on Country Club Boulevard to Wildwood Parkway; then west on Wildwood Parkway to Palm Tree Boulevard; then south on Palm Tree Boulevard to SE. 40th Street; then west on SE. 40th Street to Santa Barbara Boulevard; then south on Santa Barbara Boulevard to SW. 40th Street; then west on SW. 40th Street to Pelican Boulevard; then south on Pelican Boulevard to SW. 40th Terrace; then west on SW. 40th Terrace to SW. 5th Place; then south on SW. 5th Place to a point in Thunderbird Lake at longitude N. 26.555818, latitude W. −81.984898; then east from that point to SW. 49th Lane; then east on SW. 49th Lane to Pelican Boulevard; then south on Pelican Boulevard to longitude N. 26.54878, latitude W. −81.98239; then east from that point to longitude N. 26.54866, latitude W. −81.97834; then south from that point to the Caloosahatchee River; then north, east, and north along the Caloosahatchee River shoreline to the point of beginning.

(2) Pine Island quarantined area. That portion of the county bounded by a line drawn as follows: Beginning on the eastern Pine Island shoreline at a point on Cubles Drive at longitude N. 26.639400, latitude W. −82.106568; then south from that point along the eastern Pine Island shoreline to a point defined by longitude N. 26.619100, W. −82.105556; then west from that point to Birdsong Lane; then west on Birdsong Lane to Stringfellow Road; then north on Stringfellow Road to longitude N. 26.619628, latitude W. −82.118863; then west from that point to longitude N. 26.319436, latitude W. −82.123956; then north from that point to longitude N. 26.624970, latitude W. −82.123990; then west from that point to longitude N. 26.624978, latitude W. −82.124627; then north from that point to longitude N. 26.626005, latitude W. −82.124567; then west from that point to longitude N. 26.626088, latitude W. −82.125245; then north from that point to longitude N. 26.634922, latitude W. −82.125165; then east from that point to Harry Street; then north on Harry Street to longitude N. 26.649310, latitude W. −82.125209; then east from that point to Stringfellow Road; then north on Stringfellow Road to Sailfish Road; then east on Sailfish Road to Marlin Road; then north on Marlin Road to Porpoise Road; then east on Porpoise Road to Dolphin Road; then north on Dolphin Road to Tarpon Road; then east on Tarpon Road to a point on Cristi Way at longitude N. 26.638367, latitude W. −82.118612; then north from that point to longitude N. 26.638860, latitude W. −82.118562; then east from that point to a point on Sherwood Road at longitude N. 26.638865, latitude W. −82.109475; then north from that point to the intersection of Sherwood Road and Cubles Drive; then east on Cubles Drive to the point of beginning.

Manatee County. Duette quarantined area. That portion of the county bounded by a line drawn as follows: Beginning at the northeastern corner of sec. 26, T. 33 S., R. 21 E.; then south along the eastern boundary of sec. 26, T. 33 S., R. 21 E.; then east along the northern boundary of sec. 36, T. 33 S., R. 21 E.; then south along the eastern boundaries of sec. 36, T. 33 S., R. 21 E. and sec. 1, T. 34 S., R. 21 E.; then west along the southern boundaries of secs. 1, 2, and 3, T. 34 S., R. 21 E.; then north along the western boundaries of sec. 3, T. 34 S., R. 21 E. and secs. 34 and 27, T. 33 S., R. 21 E. to State Road 62; then east on State Road 62 to the northern boundary of sec. 26, T. 33 S., R. 21 E.; then east along the northern boundary of sec. 26, T. 33 S., R. 21 E. to the point of beginning.

Orange County. Orange County Nos. 2 and 3 quarantined areas. That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Turkey Lake Road and Lake Marsha Drive; then south on Turkey Lake Road to Sand Lake Road; then west on Sand Lake Road to Apopka Vineland Road; then south on Apopka Vineland Road to Point Cypress Drive; then west on Point Cypress Drive to the point where Lone Tree Lane begins; then north to the shoreline of Lake Tibet; then northeast and north along the eastern shoreline of Lake Tibet to the tip of the peninsula north of Bay Point Drive; then east across Lake Tibet to the western side of 9151 Houston Place; then south, east, and north along the property line of 9151 Houston Place to Houston Place; then east on Houston Place to Masters Boulevard; then north on Masters Boulevard to Osprey Isle Lane; then north on Osprey Isle Lane to Bay Side Drive; then north on Bay Side Drive to Apopka Vineland Road; then south on Apopka Vineland Road to Palm Lake Drive; then east on Palm Lake Drive to Palm Lake Circle; then east on Palm Lake Circle to Palm Lake Drive; then east on Palm Lake Drive to Dr. Phillips Boulevard; then north on Dr. Phillips Boulevard to Pine Springs Drive; then east on Pine Springs Drive to Lake Marsha Drive; then northeast on Lake Marsha Drive to the point of beginning.

Palm Beach County. (1) Boynton Beach quarantined area. That portion of the county bounded by a line drawn as follows: Beginning at the eastern end of the Boynton Inlet at the Atlantic Ocean; then south along the Atlantic Ocean coastline to the eastern end of Briny Breezes Road; then west on Briny Breezes Road to its western end; then west to the shoreline of the Intracoastal Waterway; then west across the Intracoastal Waterway to 23rd Avenue; then west on 23rd Avenue to Interstate 95; then south on Interstate 95 to the L–30 Canal; then west along the L–30 Canal to Military Trail; then north on Military Trail to Woolbright Road; then east on Woolbright Road to Quail Covey Road; then north on Quail Covey Road to West Boynton Beach Boulevard; then east on West Boynton Beach Boulevard to Knuth Road; then north on Knuth Road to Old Boynton West Road; then north across Old Boynton West Road to Javertz Street; then north on Javertz Street to the Boynton Canal; then east along the Boynton Canal to the E–4 Canal; then north along the E–4 Canal to Hypoluxo Road; then east on Hypoluxo Road to its eastern end; then east to the shoreline of the Intracoastal Waterway; then south to the western end of the Boynton Inlet; then east along the Boynton Inlet to the point of beginning.

(2) West Palm Beach quarantined area. That portion of the county bounded by a line drawn as follows: Beginning at the western end of the Royal Park Bridge; then north along the western shoreline of the Intracoastal Waterway to the southern boundary of Gettler Park at 45th Street; then west on 45th Street to Interstate 95; then south on Interstate 95 to Okeechobee Boulevard; then east on Okeechobee Boulevard to Lakeview Avenue; then east on Lakeview Avenue to the point of beginning.

Sarasota County. Englewood quarantined area. That portion of the county bounded by a line drawn as follows: Beginning at the northeastern corner of sec. 13, T. 40 S., R. 19 E.; then south along the eastern boundaries of secs. 13, 24, and 25, T. 40 S., R. 19 E. to Artists Avenue; then west on Artists Avenue to Kilbourne Avenue; then

north on Kilbourne Avenue to Ohio Avenue; then west on Ohio Avenue to the eastern shoreline of Lemon Bay; then north along the eastern shoreline of Lemon Bay to the western boundary of sec. 15, T. 40 S., R. 19 E. at Forked Creek.; then northwest and north along Forked Creek to Keyway Road; then east on Keyway Road to the northern boundary of sec. 13, T. 40 S., R. 19 E.; then east along the northern boundary of sec. 13, T. 40 S., R. 19 E. to the point of beginning.

* * * * *

Done in Washington, DC, this 8th day of September 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–20671 Filed 9–13–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–305–AD; Amendment 39–13787; AD 2004–18–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777 series airplanes, that requires replacing four socket contacts on the four boost pumps of the main fuel tanks with new, high-quality gold-plated contacts, and sealing the backshell of the connector with potting compound. This action is necessary to prevent a possible source of ignition in a flammable leakage zone, which could result in an undetected and uncontrollable fire in the wheel well or wing trailing edge, and a possible fuel tank explosion. This action is intended to address the identified unsafe condition.

DATES: Effective October 19, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of October 19, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the 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: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 917–6500; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes was published in the **Federal Register** on December 8, 2003 (68 FR 68311). That action proposed to require replacing four socket contacts on the four boost pumps of the main fuel tanks with new, high-quality gold-plated contacts, and sealing the backshell of the connector with potting compound.

Comments

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

Support for Notice of Proposed Rulemaking (NPRM)

Two commenters generally support the intent of the NPRM.

Request To Reference Latest Service Bulletin

One of the two commenters requests that the NPRM be revised to refer to Boeing Special Attention Service Bulletin 777–28–0028, Revision 1 or latest revision. The commenter notes that the NPRM refers to Boeing Special Attention Service Bulletin 777–28–0028, dated October 24, 2002, as the appropriate source of service information for the proposed actions. Based on Boeing Service Bulletin Information Notice 777–28–0028 IN 01, dated February 13, 2003, the commenter states that the airplane manufacturer is planning to revise the subject service bulletin.

The FAA agrees with the commenter to refer to Revision 1 of Boeing Service Bulletin 777–28–0028, dated July 15, 2004. Since the issuance of the NPRM, we have reviewed Revision 1. Revision 1 is essentially identical to the original issue of the service bulletin, which is referred to as the appropriate source of service information in the NPRM. No more work is necessary on airplanes changed as shown in the original issue. The only relevant changes are a revised listing of current operators of affected airplanes. Revision 1 incorrectly refers to June 06, 2002, as the date of issuance of the original issue of the service bulletin; the correct date is October 24, 2002. We have revised the final rule to refer to Revision 1 as the appropriate source of service information for the required actions and to include a new paragraph that gives operators credit for accomplishing the required actions before the effective date of this AD in accordance with original issue.

Request To Revise Work Hour Estimate

One commenter states that the labor estimate of 4 work hours in the Cost Impact section of the NPRM is unrealistic. The commenter states that there are four main tank boost pump positions, and that four work hours per airplane equates to one work hour per pump position. The commenter also states that the proposed replacement is comprised of the following tasks: preparing the airplane for rework, gaining access to each pump connector, re-terminating four sockets per connector, potting in connector sealant, etc. Excluding the sealant cure time, the commenter estimates that labor work hours are approximately three hours per pump position or 12 work hours per airplane.

From this comment, we infer that the commenter is requesting that the work hour estimate in the Cost Impact section of the NPRM be revised. We partially agree. We do agree that the work hour estimate can be increased, but only somewhat. The cost impact information, below, describes only the "direct" costs of the specific actions required by this AD. The number of work hours necessary to accomplish the required actions represents the time necessary to perform the replacement required by this AD. We recognize that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Therefore, based on the information

supplied by the commenter, we now recognize that it will take approximately 6 work hours per airplane to accomplish the required actions. We have revised the Cost Impact section of the final rule accordingly.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 400 airplanes of the affected design in the worldwide fleet. We estimate that 133 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $19 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $54,397, or $409 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this AD. As a result, the costs attributable to the AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–18–09 Boeing: Amendment 39–13787. Docket 2002–NM–305–AD.

Applicability: Model 777–200 and 777–300 series airplanes, line numbers 001 through 400 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a possible source of ignition in a flammable leakage zone, which could result in an undetected and uncontrollable fire in the wheel well or wing trailing edge, and a possible fuel tank explosion, accomplish the following:

Replace and Seal

(a) Within 18 months after the effective date of this AD, for all four boost pumps of the main fuel tanks, replace the socket contacts in positions 2, 4, 6, and 7 with new, high-quality gold-plated contacts; and seal the backshell of the connector with potting compound; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–28–0028, Revision 1, dated July 15, 2004.

Note 1: Revision 1 of Boeing Service Bulletin 777–28–0028 incorrectly refers to June 06, 2002, as the date of issuance of the original issue of the service bulletin; the correct date is October 24, 2002.

(b) Replacements done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 777–28–0028, dated October 24, 2002, as revised by Boeing Service Bulletin Information Notice 777–28–0028 IN 01, dated February 13, 2003; are acceptable for compliance with the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Bulletin 777–28–0028, Revision 1, dated July 15, 2004. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(e) This amendment becomes effective on October 19, 2004.

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–20119 Filed 9–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–06–AD; Amendment 39–13790; AD 2004–18–12]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH, Model DG–500MB Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain DG Flugzeugbau GmbH Model DG–500MB sailplanes. This AD requires you to replace the engine pylon extension/retraction Warner LA10 spindle drive

with an improved designed Stross BSA 10 spindle drive and to modify the electrical system following applicable service information. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to prevent failure of the Warner LA10 spindle drive, which could result in failure of the engine pylon extension/retraction mechanism. This condition could cause an unstable engine pylon assembly during flight with loss of control of the sailplane.

DATES: This AD becomes effective on October 22, 2004.

As of October 22, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from DG Flugzeugbau, Postbox 41 20, 76625 Bruchsal, Germany; telephone: 49 7257 890; facsimile: 49 7257 8922.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–06–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gregory Davison, Aerospace Engineer, FAA, Small Airplane Directorate, ACE–112, Room 301, 901 Locust, Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on certain DG Flugzeugbau GmbH Model DG–500MB sailplanes, all serial numbers up to and including 5E220B15. The LBA reports two separate fatigue failures of the Warner LA10 spindle drive.

What is the potential impact if FAA took no action? Failure of the Warner LA10 spindle drive could result in the engine pylon not rising or lowering, which could cause an unstable engine pylon assembly during flight. Failure of the engine pylon assembly during flight could result in loss of control of the sailplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain DG Flugzeugbau GmbH Model DG–500MB sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 20, 2004 (69 FR 29106). The NPRM proposed to require you to replace the Warner LA10 spindle drive with the Stross BSA 10 spindle drive and to modify the electrical system following Technical Note No. 843/18, issue 2, dated June 25, 2003.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

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

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

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

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many sailplanes does this AD impact? We estimate that this AD affects 4 sailplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected sailplanes? We estimate the following costs to accomplish the replacement and modification:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
12 work hours est. $65 per hour = $780	$2,662	$3,442	$13,768

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2004–CE–06–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–18–12 DG Flugzeugbau GmbH: Amendment 39–13790; Docket No. 2004–CE–06–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on October 22, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects the following sailplane models and serial numbers that are certificated in any category: DG Flugzeugbau Model DG–500MB, all serial numbers up to and including 5E220B15.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of Warner LA10 spindle drive failure. The actions specified in this AD are intended to prevent failure of the Warner LA10 spindle drive, which could result in failure of the engine pylon extension/retraction mechanism. This condition could cause an unstable engine pylon assembly during flight with consequent loss of control of the sailplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
Replace the Warner LA10 spindle drive with the Stross BSA 10 spindle drive and make any necessary electrical modifications including installation of the voltage converter for the brake of the spindle drive.	Replace and modify within 25 hours time-in-service (TIS) after October 22, 2004 (the effective date of this AD).	Follow the instructions in DG Flugzeugbau GmbH Technical Note No. 843/18 June 25, 2003.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Gregory Davison, Aerospace Engineer, FAA, Small Airplane Directorate, ACE–112, Room 301, 901 Locust, Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in DG Flugzeugbau GmbH Technical Note No. 843/18 issue 2, dated June 25, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from DG Flugzeugbau, Postbox 41 20, 76625 Bruchsal, Germany. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Is There Other Information That Relates to This Subject?

(h) LBA airworthiness directive 2003–409, dated December 9, 2003, and Technical Note No. 843/18, issue 2, dated June 25, 2003, also address the subject of this AD.

Issued in Kansas City, Missouri, on August 31, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–20310 Filed 9–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–283–AD; Amendment 39–13794; AD 2004–18–15]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas transport category airplanes listed above, that currently requires a one-time detailed inspection to determine if wire segments of the wire bundle routed through the feed-through on the aft side of the flight engineer's station are damaged or chafed, and corrective actions if necessary. That AD also requires revising the wire bundle support clamp installation at the flight engineer's station. For certain airplanes, this amendment requires a new revision of the wire bundle support clamp installation, and modification of a certain wire bundle. This amendment also reduces the applicability in the existing AD. The actions specified by this AD are intended to prevent chafing of the wire bundle located behind the flight engineer's panel caused by the wire bundle coming in contact with the lower edge of the feed-through, and consequent electrical arcing, which could result in smoke and fire in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Effective October 19, 2004.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of October 19, 2004.

The incorporation by reference of Boeing Alert Service Bulletin DC10–24A149, Revision 02, dated April 5, 2001, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 16, 2002 (66 FR 64121, December 12, 2001).

The incorporation by reference of McDonnell Douglas Alert Service Bulletin DC10–24A149, Revision 01, dated July 28, 1999, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 21, 2000 (65 FR 31253, May 17, 2000).

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

Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–24–21, amendment 39–12538 (66 FR 64121, December 12, 2001), which is applicable to all McDonnell Douglas Model DC–10 series airplanes and Model MD–10–10F and –30F series airplanes, was published in the **Federal Register** on October 2, 2003 (68 FR 56796). The action proposed to continue to require a one-time detailed inspection to determine if wire segments of the wire bundle routed through the feed-through on the aft side of the flight engineer's station are damaged or chafed, and corrective actions if necessary. That action also proposed to continue to require revising the wire bundle support clamp installation at the flight engineer's station. For certain airplanes, that action proposed to require a new revision of the wire bundle support clamp installation, and modification of a certain wire bundle. That action also proposed to remove certain airplanes from the applicability in the existing AD.

Comments

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

Request To Withdraw the Proposed AD

The commenter asks that the proposed AD be withdrawn from consideration. The commenter reiterates the requirements of the proposed AD and states that the newly proposed rule would require yet another replacement of the same clamp support bracket for the subject wire bundle. The commenter strongly objects to the proposed AD, and notes that its airplanes were inspected per the requirements of AD 2001–24–21, and no chafed or damaged wires were found. The commenter adds that it has no recorded failures of the wire bundle support bracket, and has replaced the bracket as specified in Boeing Alert Service Bulletin DC10–24A149, Revision 02, dated April 5, 2001 (referenced in the existing AD as the appropriate source of service information for accomplishment of the required actions). The commenter also adds that the proposed AD is unnecessary and states it is concerned that the succession of service bulletin revisions and superseded ADs adds confusion to compliance requirements, and creates an unnecessary risk of non-compliance.

We do not agree. As we explained in the preamble of the proposed AD, we have determined that the procedures for revising the wire bundle support clamp installation required by AD 2001–24–21 do not adequately address the identified unsafe condition for certain airplanes. In addition, the procedures specified in Revision 02 of Boeing Alert Service Bulletin DC10–24A149 (referenced in AD 2001–24–21 for accomplishment of the required actions) do not prevent electrical arcing or chafing, even if no chafed or damaged wire bundles were found during the inspection. Since we issued that AD, we have determined that the required bracket installation is inadequate because the bracket interferes with existing potting inserts. The procedures for revising the wire bundle support clamp installation at the flight engineer's station described in Revision 02 of Boeing Alert Service Bulletin DC10–24A149 have been changed by the issuance of two new revisions. These changes are included in the procedures specified in Boeing Alert Service Bulletins DC10–24A149, Revision 03, dated September 19, 2002; and Revision 04, dated March 26, 2003. Revision 03 adds procedures for the installation and relocation of a new bracket when revising the wire bundle support clamp installation, and revision of the wire bundle support clamp installation at the first observer's station for Group 3 airplanes. Revision 04 adds procedures for modification of Groups 1 and 2 airplanes on which wire bundle run (RDZ) is installed, and was changed as specified in Revision 03 of the alert service bulletin. In light of the above information, we have determined that issuance of the final rule is necessary.

Request To Extend Compliance Time

The commenter asks that the compliance time of one year for the revision of the wire bundle support clamp installation be extended to 18 months. The commenter notes that, since recent inspections of the subject area were done in accordance with the previously issued AD, the wire chafing condition that initially prompted the rulemaking has already been addressed; therefore, if any unsafe condition was found by any operator, it has already been corrected. The commenter adds that, due to this fact, allowing an 18-month compliance time for the latest correction to the bracket installation would in no way jeopardize the airworthiness or the level of safety of affected airplanes. We infer that the commenter is also requesting that the compliance time to accomplish the modification, per paragraph (d) of the proposed rule, be extended to 18 months.

We agree that the compliance time may be extended to 18 months. We have coordinated the extension of the compliance time with the manufacturer and determined that extending the compliance time will not adversely affect the operational safety of the fleet. We have revised paragraphs (c) and (d) of the final rule to reflect the 18-month compliance time.

Request To Change Cost Impact Section

The commenter disagrees with the estimate of 2.5 work hours for accomplishment of the bracket replacement. The commenter states that, due to confined work space and numerous wire bundles in the area of the modification, maintenance personnel estimate 4 work hours for accomplishment of the actions. The commenter asks that the work hours be changed before the proposed AD is issued.

We do not agree, as we have reiterated the work hours specified in Revision 04 of the referenced alert service bulletin. The number of work hours necessary to accomplish the actions, specified in the cost impact information, was provided by the manufacturer based on the best data available to date. The cost analysis in AD rulemaking actions typically does not include additional costs, such as the cost for unforeseen work hours used when working in a confined work space with numerous wire bundles in the work area. Because such work hours may vary significantly from operator to operator, depending on the airplane configuration, they are almost impossible to calculate. No change to the final rule is necessary in this regard.

Conclusion

We have carefully reviewed the available data, including the comments noted above, and have determined that

air safety and the public interest require adopting the AD as proposed.

Cost Impact

There are approximately 412 airplanes of the affected design in the worldwide fleet. The FAA estimates that 298 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 2001–24–21, takes about 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $65 per airplane.

The revision of the wire bundle support clamp installation that is currently required by AD 2001–24–21 takes about 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $130 per airplane.

For Groups 1, 2, and 3 airplanes: It will take about 2 work hours per airplane to do the new revision of the wire bundle support clamp installation, at an average labor rate of $65 per work hour. Required parts cost is minimal. Based on these figures, the cost impact of the installation is estimated to be $38,740, or $130 per airplane.

For Group 4 airplanes: It will take about 1 work hour per airplane to do the new modification of the wire bundle, at an average labor rate of $65 per work hour. Required parts cost is minimal. Based on these figures, the cost impact of the modification is estimated to be $19,370, or $65 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12538 (66 FR 64121, December 12, 2001), and by adding a new airworthiness directive (AD), amendment 39–13794, to read as follows:

2004–18–15 McDonnell Douglas: Amendment 39–13794. Docket 2002–NM–283–AD. Supersedes AD 2001–24–21, Amendment 39–12538.

Applicability: Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes; as listed in Boeing Alert Service Bulletin DC10–24A149, Revision 04, dated March 26, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the wire bundle located behind the flight engineer's panel caused by the wire bundle coming in contact with the lower edge of the feed-through, and consequent electrical arcing, which could result in smoke and fire in the cockpit, accomplish the following:

Restatement of Requirements of AD 2001–24–21

Inspection and Repair, if Necessary

(a) Within 1 year after June 21, 2000 (the effective date of AD 2000–10–03, amendment 39–11727), perform a one-time detailed inspection to determine if the wire segments of the wire bundle routed through the feed-through on the aft side of the flight engineer's station are damaged or chafed, in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A149, Revision 01, dated July 28, 1999; or Boeing Alert Service Bulletin DC10–24A149, Revision 02, dated April 5, 2001; Revision 03, dated September 19, 2002; or Revision 04, dated March 26, 2003. If any damaged or chafed wire is found, prior to further flight, repair in accordance with the alert service bulletin.

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

Revision of Wire Bundle Support Clamp Installation

(b) Within 1 year after January 16, 2002 (the effective date of AD 2001–24–21, amendment 39–12538), revise the wire bundle support clamp installation at the flight engineer's station, in accordance with Boeing Alert Service Bulletin DC10–24A149, Revision 02, dated April 5, 2001.

New Requirements of This AD

New Revision of Wire Bundle Support Clamp Installation

(c) Within 18 months after the effective date of this AD, do the applicable actions specified in paragraph (c)(1), (c)(2), or (c)(3) of this AD, in accordance with Boeing Alert Service Bulletin DC10–24A149, Revision 04, dated March 26, 2003.

(1) For Group 1 airplanes, as defined in Boeing Alert Service Bulletin DC10–24A149, Revision 04, dated March 26, 2003: Revise the wire bundle support clamp installation at the flight engineer's station.

(2) For Group 2 airplanes, as defined in Boeing Alert Service Bulletin DC10–24A149, Revision 04, dated March 26, 2003: Revise the wire bundle support clamp installation at the flight engineer's station.

(3) For Group 3 airplanes, as defined in Boeing Alert Service Bulletin DC10–24A149, Revision 04, dated March 26, 2003: Revise the wire bundle support clamp installation at the first observer's station.

Modification

(d) For Group 4 airplanes, as defined in Boeing Alert Service Bulletin DC10–24A149, Revision 04, dated March 26, 2003: Within 18 months after the effective date of this AD, modify the wire bundle in accordance with the Accomplishment Instructions of Boeing

Alert Service Bulletin DC10–24A149, Revision 04, dated March 26, 2003.

Alternative Methods of Compliance

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

Incorporation by Reference

(f) The actions must be done in accordance with the applicable service bulletin listed in Table 1 of this AD.

TABLE 1.—SERVICE INFORMATION INCORPORATED BY REFERENCE

Service information	Revision level	Date
McDonnell Douglas Alert Service Bulletin DC10–24A149	01	July 28, 1999.
Boeing Alert Service Bulletin DC10–24A149	02	April 5, 2001.
Boeing Alert Service Bulletin DC10–24A149	03	September 19, 2002.
Boeing Alert Service Bulletin DC10–24A149	04	March 26, 2003.

(1) The incorporation by reference of Boeing Alert Service Bulletin DC10–24A149, Revision 03, dated September 19, 2002; and Boeing Alert Service Bulletin DC10–24A149, Revision 04, dated March 26, 2003; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin DC10–24A149, Revision 02, dated April 5, 2001, was approved previously by the Director of the Federal Register as of January 16, 2002 (66 FR 64121, December 12, 2001).

(3) The incorporation by reference of McDonnell Douglas Alert Service Bulletin DC10–24A149, Revision 01, dated July 28, 1999, was approved previously by the Director of the Federal Register as of June 21, 2000 (65 FR 31253, May 17, 2000).

(4) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(g) This amendment becomes effective on October 19, 2004.

Issued in Renton, Washington, on August 31, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–20406 Filed 9–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–228–AD; Amendment 39–13793; AD 2004–18–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and Model A340–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A330 and A340–200 and –300 series airplanes, that currently requires revising the Limitations Section of the airplane flight manual (AFM) to ensure that the flightcrew is advised of the proper procedures in the event of uncommanded movement of a spoiler during flight. This amendment adds inspections of the function of the pressure relief valves of each spoiler servo control (SSC), and corrective action if necessary. This new AD also mandates eventual modification of the SSCs, which terminates the AFM revision in the existing AD. The actions specified by this AD are intended to prevent uncommanded movement of a spoiler during flight, which could result in reduced controllability of the airplane and consequent significant increased fuel consumption during flight, which could necessitate an in-flight turn-back or diversion to an unscheduled airport destination. This action is intended to address the identified unsafe condition.

DATES: Effective October 19, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 19, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the 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: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2002–16–12, amendment 39–12851 (67 FR 53478, August 16, 2002), which is applicable to certain Airbus Model A330 and A340 series airplanes, was published in the **Federal Register** on April 1, 2004 (69 FR 17091). The action proposed to continue to require revising the Limitations Section of the airplane flight manual (AFM) to ensure the flightcrew is advised of the proper procedures in the event of uncommanded movement of a spoiler during flight. The proposed AD also would require inspections and checks of the function of the pressure relief valves of each spoiler servo control (SSC), and corrective action if necessary. The proposed AD would also mandate eventual modification of the SSCs, which would terminate the AFM revision in the existing AD.

Comments

Interested persons have been afforded an opportunity to participate in the

making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed AD. One commenter indicates that it does not own or operate any affected airplanes.

Request To Change Applicability

One commenter reiterates the applicability listed in the French airworthiness directives referenced in the proposed AD, and issued by the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, and suggests that the applicability specified in the proposed AD be changed to match the French airworthiness directives.

We do not agree. The applicability specified in the proposed AD was carried over from AD 2002–16–12, and has not changed. For clarification, the model designation listed on the type certificate data sheet, specifying Airbus Model A330 series airplanes, covers the airplane models identified as "Airbus Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes." Airbus Model A340–200 and –300 series airplanes covers the airplane models identified as "Airbus Model A340–211, –212, –213, and A340–311, –312, and –313 airplanes." In addition, the applicability in the proposed AD already specifies the part numbers for the SSCs, as does the effectivity in the French airworthiness directives. No change is made to the AD in this regard.

Request To Clarify Paragraphs (c) and (d) of the Proposed AD

One commenter states that the repetitive inspection intervals for SSCs with any malfunction, as specified in paragraph (c) of the proposed AD, and the repetitive inspection intervals for SSCs with no malfunction, as specified in paragraph (d) of the proposed AD, are redundant.

Although the commenter does not make a specific request, we infer that the commenter is asking for clarification of the repetitive inspection intervals specified in paragraphs (c) and (d) of the proposed AD. We agree that some clarification is necessary; therefore, we have removed the repetitive inspection/check intervals for functioning SSCs from paragraph (c), and included clarification that the requirements in paragraph (c) are only for affected SSCs on which a malfunction is found. In addition, we have included clarification that the repetitive inspections/checks required by paragraph (d) are only for affected SSCs on which no malfunction is found.

Requests To Change Compliance Times

One commenter states that there is a difference between the proposed AD and the referenced French airworthiness directives regarding the starting date for the initial detailed inspection/functional check. The commenter also notes that there is a difference between the proposed AD and the referenced French airworthiness directives which provide a calendar date for accomplishment of the terminating action for all SSCs.

Although the commenter does not make a specific request, we infer that the commenter is asking that the compliance time for the initial detailed inspection/functional check and the terminating action, as specified in paragraphs (b) and (e) of the proposed AD, respectively, be changed to match the compliance times in the French airworthiness directives.

We do not agree. The French airworthiness directives give a compliance time for the initial detailed inspection/functional check based on the original issue date of those airworthiness directives. Due to some procedural differences in the way we express compliance times, the compliance time in this AD is presented in a manner that differs from that in the French airworthiness directives. However, the compliance time captures the intent of the French airworthiness directives, and ensures that operators of all affected airplanes are given sufficient time to accomplish the inspection, while still ensuring operational safety.

In addition, the compliance time in the French airworthiness directives for the terminating action specifies a calendar time, but we do not express compliance times in terms of calendar dates unless an engineering analysis establishes a direct relationship between the date and the compliance time. Additionally, a risk assessment done by the manufacturer and the DGAC, in agreement with the FAA, validates the compliance times required by this AD.

In light of these factors, we have determined that 700 flight hours for the initial detailed inspection/functional check, and 13 months for the terminating action, is appropriate. No change is made to the AD in this regard.

Another commenter asks that the compliance time for the terminating action be extended. The commenter states that the actions required by the proposed AD are best suited for a base maintenance environment. The commenter adds that the current compliance time of 13 months for accomplishment of the modification of the SSCs does not coincide with any scheduled maintenance interval. The commenter asks that the compliance time be extended to 18 months to correspond with the C-check interval.

We do not agree that the compliance time for the terminating action should be extended. As specified in our response above, a risk assessment done by the manufacturer and the DGAC, in agreement with the FAA, validates the compliance times required by this AD. No change is made to the AD in this regard.

Conclusion

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

Cost Impact

There are about 14 airplanes of U.S. registry that will be affected by this AD.

The AFM revision that is currently required by AD 2002–16–12 takes about 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required AFM revision is estimated to be $65 per airplane.

The new inspections/checks that are required by this AD action will take about 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspections/checks required by this AD on U.S. operators is estimated to be $910, or $65 per airplane, per inspection/check cycle.

The new modification that is required by this AD action will take about 15 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts will be provided to operators free of charge. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $13,650, or $975 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include

incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Currently, there are no Model A340 series airplanes on the U.S. Register. However, if an affected airplane is imported and placed on the U.S. Register in the future, the new inspections/checks in this AD action would take about 1 work hour, at an average labor rate of $65 per work hour. Based on these figures, we estimate the cost of the inspections/checks to be $65 per airplane, per inspection/check cycle. The new modification in this AD action would take about 15 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts would be provided to operators free of charge. Based on these figures, we estimate the cost of this modification to be $975 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12851 (67 FR 53478, August 16, 2002), and by adding a new airworthiness directive (AD), amendment 39–13793, to read as follows:

2004–18–14 Airbus: Amendment 39–13793. Docket 2002–NM–228–AD. Supersedes AD 2002–16–12, Amendment 39–12851.

Applicability: Model A330 and A340–200 and –300 series airplanes, certificated in any category; equipped with any spoiler servo control having part number (P/N) 1386A0000–01, 1386B0000–01, 1387A0000–01, or 1387B0000–01.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is advised of the proper procedures in the event of uncommanded movement of a spoiler during flight, which could result in reduced controllability of the airplane and consequent significant increased fuel consumption during flight, and could result in an in-flight turn-back or diversion to an unscheduled airport destination, accomplish the following:

Restatement of Requirements of AD 2002–16–12

Revision to Airplane Flight Manual (AFM)

(a) Within 10 days after September 20, 2002 (the effective date of AD 2002–16–12, amendment 39–12851), revise the Limitations Section of the AFM by including the procedures listed in Figure 1 of this AD. This revision may be done by inserting a copy of the following Figure 1 into the AFM:

Figure 1

"PROCEDURE:

- If "F/CTL SPLR FAULT" is triggered
  —F/CTL S/D
  page ..... CHECK
- If the affected spoiler is not indicated extended amber:
  The spoiler is faulty in the retracted position. In such a case, the specific OEB procedure does not apply.
  —LDG DIST PROC ..... APPLY
  Multiply the landing distance by 1.1 for 3 or 4 spoilers lost per wing.
  Multiply the landing distance by 1.2 for 5 or 6 spoilers lost per wing.
- If the affected spoiler is indicated extended amber, apply the following procedure:
  IN CRUISE
  CAUTION
  Disregard FMGC fuel predictions, as they do not take the increase in fuel consumption into account.
  —FUEL CONSUMPTION INCREASE ..... APPLY
  Apply 18.5% increase in the fuel consumption.
  —IN-FLIGHT TURN BACK/DIVERSION ..... CONSIDER
  In-flight turn back or diversion may have to be considered due to this fuel penalty.
  —MAX ACHIEVABLE ALTITUDE DECREASE ..... CONSIDER
  With the maximum spoiler deflection, the maximum altitude in ISA conditions may decrease by 4,500 feet.
  FOR LANDING
  —FOR LDG ..... USE FLAP 3
  Use CONF 3 for landing to avoid possible buffeting, which, however, may be high depending on the failed spoiler.
  —VAPP ..... NORM
  —LDG DIST ..... x 1.1"

Note 1: When the procedure in paragraph (a) of this AD has been incorporated into the general revisions of the AFM, the general revisions may be incorporated into the AFM, provided the procedures in this AD and the general revisions are identical. This AD may then be removed from the AFM.

New Requirements of This AD

Initial Detailed Inspection/Functional Check

(b) Within 700 flight hours after the effective date of this AD: Do a detailed

inspection/functional check of the blocking function of the pressure relief valves (PRVs) of affected spoiler servo controls (SSCs) by doing all the actions in accordance with paragraphs 3.A., 3.B.(1)(a), 3.D., and 3.E. of the Accomplishment Instructions of Airbus Service Bulletin A330–27–3090 (for A330 series airplanes) or A340–27–4096 (for A340–200 and –300 series airplanes), both Revision 02, both dated August 1, 2002, as applicable.

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

Note 3: Liebherr Service Bulletin 1386A–27–03, Revision 1, dated February 4, 2002, is referenced in Airbus Service Bulletins A330–27–3090 and A340–27–4096, both Revision 02, as an additional source of service information for accomplishment of the inspections.

Corrective Action

(c) For airplanes having an affected SSC on which any malfunction is found during the inspection/functional check required by paragraph (a) of this AD: Before further flight, do the terminating action required by paragraph (e) of this AD for that SSC.

(d) For airplanes having affected SSCs on which no malfunction is found during the inspection/functional check required by paragraph (a) of this AD: Repeat the inspection/functional check one time within 1,600 flight hours after accomplishment of the initial inspection required by paragraph (a) of this AD. If no malfunction is found, repeat the inspection/functional check thereafter at intervals not to exceed 2,400 flight hours, until accomplishment of the terminating action required by paragraph (e) of this AD.

Terminating Action

(e) Except as required by paragraph (c) of this AD: Within 13 months after the effective date of this AD, modify all affected SSCs by doing all the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3094 (for A330 series airplanes) or A340–27–4100 (for A340–200 and –300 series airplanes), both Revision 01, both dated August 1, 2002; as applicable. Modification of all affected SSCs terminates the requirements of paragraphs (a), (b), (c), and (d) of this AD. After the modification has been done, the previously required AFM revision may be removed.

Note 4: Liebherr Service Bulletin 1386A–27–05, dated February 25, 2002, is referenced in Airbus Service Bulletins A330–27–3094 and A340–27–4100 as an additional source of service information for accomplishment of the modification.

Previously Accomplished Actions

(f) Accomplishment of the inspections in accordance with Airbus Service Bulletins A330–27–3090 and A340–27–4096, both dated September 28, 2001; or A340–27–4096, Revision 01, dated December 12, 2001; as applicable; is considered acceptable for compliance with the inspections required by this AD.

(g) Airbus Service Bulletins A330–27–3090 and A340–27–4096, both dated August 1, 2002, specify to submit inspection results to the manufacturer, however; this AD does not include that requirement.

Parts Installation

(h) As of the effective date of this AD, no person may install on any airplane a spoiler servo control having P/N 1386A0000–01, 1386B0000–01, 1387A0000–01, or 1387B0000–01, unless it has been modified per paragraph (e) of this AD.

Alternative Methods of Compliance

(i) 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

(j) The actions shall be done in accordance with the applicable service bulletins listed in Table 1 of this AD, unless the AD specifies otherwise.

TABLE 1.—MATERIALS INCORPORATED BY REFERENCE

Airbus service bulletin	Revision level	Date
A330–27–3090	02	Aug. 1, 2002.
A330–27–3094	01	Aug. 1, 2002.
A340–27–4096	02	Aug. 1, 2002.
A340–27–4100	01	Aug. 1, 2002.

The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies of the documents from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. You can review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; 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 5: The subject of this AD is addressed in French airworthiness directives 2002–552(B) and 2002–553(B), both dated November 13, 2002.

Effective Date

(k) This amendment becomes effective on October 19, 2004.

Issued in Renton, Washington, on August 31, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–20407 Filed 9–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–297–AD; Amendment 39–13792; AD 2004–18–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; and Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622R, C4–605R Variant F, and F4–605R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and B4 series airplanes, and Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622R, C4–605R Variant F, and F4–605R airplanes, that currently requires a one-time inspection for cracking of the gantry lower flanges in the main landing gear (MLG) bay area; and repair, if necessary. This amendment removes an airplane model from the applicability. This amendment, for certain airplanes, retains the one-time inspection for cracking of the gantry lower flanges and repair, if necessary. For other airplanes, this amendment adds repetitive inspections of the gantry lower flanges; repair, if necessary; and reinforcement of the left-hand and right-hand gantry. The actions specified by this AD are intended to detect and correct cracking of the gantry lower flanges in the MLG bay area, which could result in decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective October 19, 2004.

The incorporation by reference of Airbus Service Bulletin A300–53–6128, dated March 5, 2001, as listed in the regulations, is approved by the Director of the Federal Register as of October 19, 2004.

The incorporation by reference of Airbus All Operators Telex (AOT) 53–11, dated October 13, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of July 30, 1998 (63 FR 34589, June 25, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the 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: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–13–37, amendment 39–10628 (63 FR 34589, June 25, 1998), which is applicable to certain Airbus Model A300 B2 and B4 series airplanes, and Model A300 B4–601, B4–603, B4–620, B4–605R, B4–622R, and F4–605R airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on June 25, 2002 (67 FR 42739). The action proposed to continue to require a one-time inspection for cracking of the gantry lower flanges and repair if necessary. The action also proposed to remove one airplane model from the applicability. For other airplanes, the action proposed to add repetitive inspections of the gantry lower flanges; repair, if necessary; and reinforcement of the left-hand and right-hand gantry.

Comments

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

Request To Revise Initial Compliance Time

One commenter requests that the compliance time for initial inspections required in paragraph (b)(1) of the NPRM be revised to allow a grace period of "200 flight cycles from the effective date of the new AD." The commenter points out that the NPRM specifies that initial inspections are to be done within 200 flight cycles from service bulletin reception, which allows no grace period with respect to the AD. The commenter contends that its request would give operators a more manageable time to accomplish the initial visual inspections and follow-up inspections. The commenter believes this change provides a realistic grace period for the NPRM that is based on manufacturer and service bulletin data.

We agree with the commenter's request to revise the compliance time for the initial inspections required in paragraph (b) of the final rule. Airbus Service Bulletin A300–53–6128, dated March 5, 2001, which is referenced as the appropriate source of service information for accomplishing the required actions of the final rule, specifies thresholds for the initial inspection that are based on airplane configuration and includes a grace period of "200 flight cycles after receipt of this service bulletin." We have reviewed the information in the service bulletin and have determined that a 200-flight-cycle grace period based on the effective date of the AD will address the unsafe condition in a timely manner. We have revised paragraph (b) of the final rule accordingly.

Request To Allow Direction Générale de l'Aviation Civile (DGAC) Approval

The same commenter also requests that the DGAC, which is the airworthiness authority for France, or its delegated agent, be allowed to approve repair methods for the repairs specified in paragraph (b)(3) of the NPRM. The commenter notes that this approval by the DGAC is allowed on other ADs and is in accordance with bilateral agreements with the FAA and the DGAC. The commenter states that this will allow operators to accept repair data approved by the DGAC and provide uniformity with other ADs for Model A300 airplanes.

We agree with the commenter's request to allow the DGAC, or its delegated agent, to approve repair methods for the repairs specified in paragraph (b)(4) of the final rule (specified as paragraph (b)(3) in the NPRM). In light of the type of repair that will be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for the final rule, a repair approved by either the FAA or the DGAC is acceptable for compliance with this final rule. We have revised paragraph (b)(4) of the final rule accordingly.

Request for Credit for Inspections Accomplished in Accordance With AD 98–13–37

The same commenter also requests that Model A300–600 series airplanes that have accumulated below 20,500 flight cycles and have been previously inspected in accordance with AD 98–13–37 be considered in compliance with the NPRM's initial inspection requirements. The commenter contends that this would allow operators to take credit for previously accomplished equivalent inspections. The commenter notes that AD 98–13–37 inspects gantries 3 and 4 in accordance with Airbus AOT 53–11, dated October 13, 1997, and if no cracks are found, requires the next inspection at 8,000 flight cycles. Therefore, the commenter states the inspections are equivalent to those required by the NPRM. In addition, the commenter notes that the initial inspection for gantry 5 is not required until 20,500 flight cycles. The commenter believes that the statement "* * * required as indicated, unless previously accomplished" probably allows for this credit but they would like specific clarification.

We agree with the commenter that operators should get credit for inspections previously accomplished in accordance with Airbus AOT 53–11, dated October 13, 1997. Operators are given credit for work previously performed by means of the phrase in the compliance section of the final rule that states, "Required as indicated, unless accomplished previously." Therefore, an inspection done previously in accordance with the AOT is acceptable for compliance with the inspection specified in paragraph (a) of the final rule. However, since the inspections in paragraph (b) of the final rule are required to be accomplished in accordance with Airbus Service Bulletin A300–53–6128, dated March 5, 2001, we have added paragraph (c) to the final rule to give operators credit for applicable inspections done previously in accordance with the AOT.

Clarification of Applicability

We inadvertently excluded Airbus Model A300 C4–605R Variant F airplanes from the applicability of the NPRM. The applicability of the NPRM was intended to be the same as French airworthiness directive (AD) 2001–091(B), dated March 21, 2001, excluding Model A300 F4–622R airplanes, and French AD 1997–372–236(B) R2, dated April 18, 2001. We have revised the applicability of the final rule to include Airbus Model A300 C4–605R Variant F airplanes and have added these airplanes to paragraph (b) of the final rule. These airplanes are not registered in the U.S. so adding these airplanes to the applicability does not increase the burden of any U.S. operator nor does it expand the scope of the final rule.

However, adding these airplanes to the applicability will ensure that if the affected airplane is imported and placed on the U.S. register in the future, the airplane will be required to be in compliance as well.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

One-Time Inspection

The number of airplanes affected by AD 98–13–37 was estimated to be 67. The one-time inspection required by that AD was estimated to take approximately 4 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of AD 98–13–37 on U.S. operators was estimated to be $17,420, or $260 per airplane.

The FAA currently estimates that 43 Model A300 B2 and B4 series airplanes of U.S. registry will be affected by the one-time inspection required by AD 98–13–37 and retained in this AD. However the future cost impact of this requirement is minimal as we consider that all affected U.S. operators have previously accomplished these requirements.

Repetitive Inspections

The FAA estimates that 78 Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622R, and F4–605R airplanes of U.S. registry will be affected by the required repetitive inspections, that it will take approximately 12 work hours per airplane to accomplish each inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the required repetitive inspections on those U.S. operators is estimated to be $60,840, or $780 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–10628 (63 FR 34589, June 25, 1998), and by adding a new airworthiness directive (AD), amendment 39–13792, to read as follows:

2004–18–13 Airbus: Amendment 39–13792. Docket 2000–NM–297–AD. Supersedes AD 98–13–37, Amendment 39–10628.

Applicability: Model A300 B2 and B4 series airplanes on which Airbus Modification 3474 has been accomplished; and Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622R, C4–605R Variant F, and F4–605R airplanes on which Airbus Modification 12169 has not been incorporated in production; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the gantry lower flanges in the main landing gear (MLG) bay area, which could result in decompression of the airplane, accomplish the following:

One-Time Inspection and Corrective Action

(a) For Model A300 B2 and B4 series airplanes: Prior to the accumulation of 16,300 total flight cycles, or within 500 flight cycles after July 30, 1998 (the effective date of AD 98–13–37, amendment 39–10628), whichever occurs later, perform a one-time ultrasonic inspection for cracking of the gantry lower flanges in the MLG bay area, in accordance with Airbus All Operators Telex (AOT) 53–11, dated October 13, 1997.

(1) If any cracking is detected, prior to further flight, repair in accordance with the AOT.

(2) If no cracking is detected, no further action is required by this paragraph.

Repetitive Inspections and Corrective Action

(b) For Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622R, C4–605R Variant F airplanes, and F4–605R airplanes: Perform the requirements of paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD, in accordance with Airbus Service Bulletin A300–53–6128, dated March 5, 2001.

(1) At the later of the times specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this AD, perform initial ultrasonic inspections or high-frequency eddy current inspections for cracks of the lower flanges of gantries 3, 4, and 5 between fuselage frames FR47 and FR54, in accordance with the Accomplishment Instructions, including the Synoptic Chart contained in Figure 2, sheets 1 through 5 inclusive, of the service bulletin.

(i) In accordance with the thresholds specified in the Synoptic Chart contained in Figure 2, sheets 1 through 5 inclusive, of the service bulletin; or

(ii) Within 200 flight cycles after the effective date of this AD.

(2) Perform repetitive ultrasonic inspections or high-frequency eddy current inspections for cracks of the lower flanges of gantries 3, 4, and 5 between fuselage frames FR47 and FR54, in accordance with the thresholds and Accomplishment Instructions, including the Synoptic Chart contained in Figure 2, sheets 1 through 5 inclusive, of the service bulletin.

(3) Perform repairs and reinforcements, in accordance with the thresholds and the Accomplishment Instructions, including the Synoptic Chart contained in Figure 2, sheets 1 through 5 inclusive, of the service bulletin, except as specified in paragraph (b)(4) of this AD.

(4) If a new crack is found during any action required by paragraph (b)(1), (b)(2) or (b)(3) of this AD and the Synoptic Chart contained in Figure 2, sheets 1 through 5 inclusive, of the service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair per a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

Credit for Inspections Accomplished in Accordance With the AOT

(c) Any inspection accomplished before the effective date of this AD in accordance with Airbus AOT 53–11, dated October 13, 1997, is acceptable for compliance with the corresponding inspection specified in paragraph (b)(1) of this AD, for that inspection area only. Operators must do the applicable inspections in paragraph (b)(1) of this AD for the remaining inspection areas.

Alternative Methods of Compliance (AMOCs)

(d) An AMOC or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved AMOCs with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Airbus Service Bulletin A300–53–6128, excluding Appendix 01, dated March 5, 2001; and Airbus All Operators Telex (AOT) 53–11, dated October 13, 1997; as applicable.

(1) The incorporation by reference of Airbus Service Bulletin A300–53–6128, excluding Appendix 01, dated March 5, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus All Operators Telex (AOT) 53–11, dated October 13, 1997, was approved previously by the Director of the Federal Register as of July 30, 1998 (63 FR 34589, June 25, 1998).

(3) Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the 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 3: The subject of this AD is addressed in French airworthiness directives 1997–372–236(B) R2, dated April 18, 2001, and 2001–091(B), dated March 21, 2001.

Effective Date

(g) This amendment becomes effective on October 19, 2004.

Issued in Renton, Washington, on August 31, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–20408 Filed 9–13–04; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 309

Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission" or "FTC") is publishing amendments to the Commission's rule concerning Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles ("Rule"). The Commission is amending the Rule to delete vehicle-specific emissions information and, in its place, adding a reference to the Environmental Protection Agency's (EPA's) green vehicle guide Web site. EPA's guide, located on its Web site at *http://www.epa.gov/greenvehicle,* provides detailed, comparative information regarding vehicle emissions generally and by vehicle model. The Commission commenced this rulemaking proceeding because the emissions standards on the current alternative fueled vehicle ("AFV") label are obsolete as of the 2004 vehicle model year, and the Ford Motor Company ("Ford") petitioned the Commission to revise the label. The Commission also conducted a review of this Rule pursuant to the Commission's regulatory review program.

EFFECTIVE DATE: The amendments will become effective on March 31, 2005.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, (202) 326–2889, or Neil Blickman, Attorney, (202) 326–3038, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Part A—Background

1. The Rule

The Energy Policy Act of 1992 ("EPA 92" or the "Act")[1] establishes a comprehensive national energy policy to increase U.S. energy security in cost-effective and environmentally beneficial ways. The Act seeks to reduce U.S. dependence on oil imports, encourage conservation and more efficient energy use, reduce the use of oil-based fuels in the motor vehicle sector, and provide new energy options. The Act also provides for programs that encourage the development of alternative fuels and alternative fueled vehicles.

Section 406(a) of EPA 92 directed the Commission to establish uniform labeling requirements, to the greatest extent practicable, for alternative fuels and AFVs.[2] In accordance with the statutory directive, on May 19, 1995, the Commission published a Rule requiring disclosure of specific information[3] on:

[1] Pub. L. 102–486, 106 Stat. 2776 (1992).

[2] 42 U.S.C. 13232(a). EPA 92 did not specify what information should be displayed on these labels. Instead, it provided generally that the Commission's rule must require disclosure of "appropriate," "useful," and "timely" cost and benefit information on "simple" labels.

[3] 60 FR 26926. The Rule also requires that sellers maintain records substantiating product-specific disclosures they include on these labels.

(a) Labels posted on fuel dispensers for non-liquid alternative fuels (*e.g.*, compressed natural gas, hydrogen, and electricity), effective August 21, 1995; and (b) labels on AFVs, which are designed to operate on at least one alternative fuel (*e.g.*, vehicles fueled by compressed natural gas, liquified petroleum gas, ethanol, and electricity), effective November 20, 1995.[4]

Section 309.20 of the Rule provides that before offering for consumer sale a new covered AFV, manufacturers must affix, on a visible surface of each such vehicle, a label consisting of three parts.[5] Part one discloses objective information about the estimated cruising range and detailed emissions information of the particular AFV. Part two discloses and explains specific factors consumers should consider before buying an AFV.[6] Part three lists specific toll-free telephone numbers for consumers who want to call the federal government for more information about AFVs.[7] Section 309.20 of the Rule further states that no marks or information other than that specified by the Rule may appear on the label.

2. EPA's Emissions Certification Program

For many years, EPA has promulgated emissions classification standards as part of its Federal Motor Vehicle Control Program, which establishes pollution limits for "criteria air pollutants" (*i.e.*, hydrocarbons, carbon monoxide, nitrogen oxides, and particulate matter). These pollutants are released as exhaust from an automobile's tailpipe. In addition, hydrocarbons in vapor form are released due to the evaporation of fuel and during refueling. The standards apply to new motor vehicles manufactured in specified model years. After manufacturers submit appropriate test reports and data, the EPA Administrator issues a "certificate of conformity" to those vehicle manufacturers demonstrating compliance with the applicable emissions standards.

Pursuant to its authority under the 1990 Clean Air Act Amendments,[8] EPA began issuing stricter emission standards for each model year as a way of reducing levels of the criteria air pollutants. One set of standards, the Tier 1 standards, was phased in beginning with the 1994 model year. The second set of standards, phased in beginning with the 2000 model year, establishes stricter standards as part of a new "clean-fuel vehicles" program.[9] To qualify as a clean-fuel vehicle, a vehicle must meet one of five increasingly stringent standards. The standards are denominated, in increasing order of stringency, TLEV ("Transitional Low Emission Vehicle"), LEV ("Low Emission Vehicle"), ULEV ("Ultra Low Emission Vehicle"), ILEV ("Inherently Low Emission Vehicle"), and ZEV ("Zero Emission Vehicle"). The FTC Rule requires both sets of EPA emission standards to be disclosed because the Commission determined that information concerning EPA emission certification levels provides a simple way of comparing different AFVs and, therefore, is useful to consumers considering AFV acquisitions.[10] Since the FTC's Rule was promulgated, EPA has promulgated new tailpipe emission standards, called the "Tier 2" standards.[11] As a result, the EPA standards currently required to be disclosed on the Commission's AFV label are obsolete starting in the 2004 vehicle model year.

3. Ford's Petition

Ford's petition concerns EPA's Tier 2 tailpipe emission standards. These standards, as well as new, more stringent California Low Emission Vehicle II ("LEV II") standards discussed below, limit exhaust emissions of five pollutants: Non-methane organic gases, carbon monoxide, nitrogen oxides, particulate matter, and formaldehyde.[12]

Tier 2 is a fleet averaging program, which is modeled after the California LEV II standards. Manufacturers can produce vehicles with emissions ranging from relatively dirty to zero, but the mix of vehicles a manufacturer sells each year must have average nitrogen oxide emissions below a specified value. The Tier 2 tailpipe emissions standards are structured into eleven certification levels of different stringency called "certification bins." Vehicle manufacturers will have a choice of certifying particular vehicles to any of the eleven bins.

Additionally, Ford noted that in October 1999, California adopted more stringent state tailpipe emission standards, called the "LEV II" standards, which are applicable starting in the 2004 vehicle model year. California did not adopt the same standards EPA established, nor did it adopt the same acronyms (bins) for its standards. California's LEV II standards are denominated, in increasing order of stringency, LEV, ULEV, SULEV ("Super Ultra Low Emission Vehicle"), PZEV ("Partial Zero Emission Vehicle"), and ZEV. California's LEV II standards affect passenger cars, light-duty trucks, and medium-duty vehicles.

Ford, and other manufacturers, are required to certify their AFVs to the more stringent EPA Tier 2 emission standards beginning in the 2004 model year. Ford petitioned the Commission to amend the Commission's AFV label because it does not provide a means of conveying information about the new EPA Tier 2 standards. Ford specifically requested that the Commission amend the Rule to permit use of an AFV label that substitutes the eleven Tier 2 certification bins for the EPA emission standards that currently appear on the label. Ford also requested that the Commission amend the Rule to permit inclusion of boxes and acronyms for California LEV II emission standards on the Commission's AFV label. Alternatively, Ford requested that the AFV label be amended to require disclosure of only the EPA Tier 2 emission standard, if any, to which the AFV has been certified, and permit disclosure on the same label of the California LEV II emission standard, if any, to which the AFV has been certified. Ford's petition raised

[4] AFVs come in a variety of vehicle models, such as sedans, pickup trucks, and sport utility vehicles. Hybrid electric vehicles, however, such as the Ford Escape, Toyota Prius, and Honda Insight, are not defined as AFVs under EPA 92 and, therefore, they are not covered by the Commission's Rule. According to staff at the Department of Energy, most AFVs are purchased by government and private fleets (*e.g.*, the U.S. Postal Service, transit bus authorities, United Parcel Service, and Federal Express).

[5] Section 309.1(f) of the Rule defines a covered vehicle as either of the following: (1) A dedicated or dual fueled passenger car (or passenger car derivative) capable of seating 12 passengers or less; or (2) a dedicated or dual fueled motor vehicle (other than a passenger car or passenger car derivative) with a gross vehicle weight rating less than 8,500 pounds which has a vehicle curb weight of less than 6,000 pounds and which has a basic vehicle frontal area of less than 45 square feet, which is: (i) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or (ii) designed primarily for transportation of persons and has a capacity of more than 12 persons. Further, section 309.1(t) of the Rule defines a new covered vehicle as a covered vehicle which has not been acquired by a consumer. The Rule also contains labeling requirements for used AFVs.

[6] The factors include information concerning fuel type, operating costs, fuel availability, performance/convenience, and energy security/renewability.

[7] The federal government agencies referenced are the Department of Energy ("DOE") and the National Highway Traffic Safety Administration ("NHTSA").

[8] Pub. L. 101–549, 104 Stat. 2399 (1990).

[9] *See* 40 CFR 88 (1996).

[10] 60 FR 26926, 26946 (May 19, 1995).

[11] 65 FR 6698 (Feb. 10, 2000). These standards regulate emissions from cars and light-duty trucks, which include sport utility vehicles, pick-up trucks, and minivans.

[12] According to staff at EPA, the Tier 2 program is designed to reduce the emissions most responsible for the ozone and particulate matter impact from vehicles—nitrogen oxides and non-methane organic gases consisting primarily of hydrocarbons and contributing to ambient volatile organic compounds, and hence urban smog.

important issues which led the Commission to initiate this proceeding and consider alternatives to existing requirements.[13]

Part B—The Notice of Proposed Rulemaking

In response to Ford's petition, the Commission issued a proposed rule on May 8, 2003 (68 FR 24669) seeking comments on possible amendments to the AFV label.[14] Specifically, the Commission sought comments on Ford's petition, the impact of EPA's new Tier 2 standards on the label, and four options the Commission proposed for amending the label. The Commission also posed specific questions about these options and broad questions as part of its overall regulatory review of existing alternative fuel and AFV labeling requirements.[15] These four options the Commission proposed are summarized as follows:

1. Option No. 1

This option tracked Ford's first proposal. It would modify the AFV label by substituting EPA's Tier 2 emission standards for the EPA standards that currently are depicted on the label. The Tier 2 standards reflect the varying emissions levels and are divided into 11 categories or "bins." In the Option 1 label, these bins were depicted as a horizontal row of boxes with corresponding acronyms that were divided into 11 equal parts or "bins." This option would permit an additional, second row of boxes and acronyms that depict the California LEV II standards. If a vehicle has been certified to a California LEV II standard, this option would allow that fact to be noted with a mark in a box on the label, along with a caret inserted above the standard to which the vehicle has been certified. Option 1 also included a reference to EPA's new green vehicle guide Web site, and stated: "Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit *http://www.epa.gov/greenvehicle.*"

2. Option No. 2

This option tracked Ford's alternate proposal. It would require disclosure of the EPA Tier 2 emission standard, if any, to which the AFV has been certified, and permit disclosure on the same label of the California LEV II emission standard, if any, to which the AFV has been certified. Unlike the existing label requirements, the label would not indicate where the vehicle's emissions rating falls on the range of emission standards. For this option, the Commission also proposed providing a reference to EPA's green vehicle guide Web site in part three of the label. This option would simplify the emissions disclosure section of the label and allow manufacturers to indicate their compliance with the EPA Tier 2 and California LEV II emission standards.

3. Option No. 3

This option deleted specific reference to EPA's emissions standards on the front of the AFV label, and instead directed interested consumers to EPA's green vehicle guide Web site. The Commission further proposed moving the information in parts two and three of the AFV label from the back to the front of the label.

4. Option No. 4

This option combined option number two and, in part, option number three. Specifically, the Commission proposed requiring disclosure of only the EPA Tier 2 emission standard, if any, to which the AFV has been certified, and permitting disclosure on the same label of the California LEV II emission standard, if any, to which the AFV has been certified. For this option, the Commission also proposed providing a reference in part three of the label to EPA's green vehicle guide Web site.

5. Used AFVs

In the NPR, the Commission proposed adding the reference to EPA's green vehicle guide website to the Rule's label for used AFVs. This label does not contain the cruising range and emissions information required for new AFV labels. Part one discloses and explains specific factors consumers should consider before buying a used AFV. Part two lists specific toll-free telephone numbers for consumers who want to call DOE and NHTSA for more information about AFVs. Section 309.21 of the Rule further states that no marks or information other than that specified by the Rule may appear on the label.

Part C—Public Comments

In response to the May 8, 2003 proposed rule, the Commission received comments from (1) the Alliance of Automobile Manufacturers ("Alliance"), (2) the Association of International Automobile Manufacturers, Inc. ("AIAM"), (3) the National Automobile Dealers Association ("NADA"), and (4) the California Air Resources Board ("ARB") staff. The bulk of the comments addressed aspects of the AFV label and the options presented in the proposed rule. The comments focused on vehicle labeling and did not address the issue of labeling for alternative fuels in connection with the overall regulatory review of the Rule.

1. The Need for the Alternative Fueled Vehicle Labels

The Alliance urged the Commission to repeal the AFV label requirements arguing that the label is duplicative of information provided elsewhere. According to the Alliance, "fleet purchasers usually receive information on alternative fueled vehicles during government or fleet conferences or seminars or are directly contacted by the manufacturer." As a result, it contends, the label adds little or no value for most consumers looking to buy these vehicles. In addition, the Alliance indicated that consumer information such as cost, fuel type, fuel economy values, fuel costs, and emissions can be found on other labels such as the pricing label, fuel economy label, and the Vehicle Emissions Control Information ("VECI") label, which are all displayed on the vehicle at the time of purchase.[16] Similarly, NADA suggested that the FTC should require that the alternative fueled vehicle label be incorporated into the EPA fuel economy label. NADA believes that consumers would benefit from having all this information in one place.[17] The other two commenters, AIAM and ARB, did not address whether the FTC label should be eliminated or moved.

2. Vehicle-Specific Emissions Information on the Label

AIAM supported the continued inclusion of vehicle-specific emissions information on the label (*i.e.*, Option 1). It stated that this information allows consumers to compare vehicles. For the label to have practical value, AIAM stressed that it needed to have substantive content. In its view, emissions information is relevant because consumers are usually interested in purchasing alternative fueled vehicles because they have lower pollution levels. AIAM also suggested that such emissions information may not be easily available to consumers if it is not included on the FTC label. According to AIAM, manufacturers also should have the option of displaying

[13] The NPR describes Ford's petition in greater detail. *See* 68 FR at 24670–71.

[14] This rulemaking proceeding has been conducted pursuant to section 553 of the Administrative Procedure Act ("APA"), 5 U.S.C. 553, as was the original proceeding promulgating the Rule. This Final Rule is being published pursuant to the provisions of Part 1, Subpart C of the Commission's Rules of Practice, 16 CFR 1.21–1.26, and 5 U.S.C. 551 *et seq.*

[15] *See* 68 FR at 24678.

[16] Alliance, cover letter and p. 1.

[17] NADA, p. 2.

California and federal emissions information on the same label to avoid the need for separate labels.[18]

The Alliance, on the other hand, preferred eliminating emissions information from the label (if the Commission decides to retain the label). Accordingly, the Alliance supported the adoption of a modified version of Option 3, which would eliminate specific emissions information. The Alliance indicated that, although some AFVs are certified to lower emissions standards than their gasoline equivalents, a comparison of the emissions certification for both types of vehicles is difficult without access to emissions information for both types of vehicles. In its view, however, informed purchasers seek emissions information prior to visiting the showroom. The Alliance also recommended a one-sided label which, in essence, is a condensed version of Option 3 in the Commission's proposed rule.

The Alliance raised three specific concerns about the retention of emissions information on the label. First, it contended the emission block proposed in Option 1 does not correctly describe the emission levels for California. Given the phase-in period for California, some models will be certified under LEV 1 program standards while others will be certified under LEV II program standards during 2004 to 2006. Accordingly, LEV1 information would have to be included on the label until 2006. In addition, the Alliance described other complications associated with permitting the California standards to be included on the label.[19] In essence, it asserted that listing all of the different California categories "becomes extremely cumbersome."[20]

Second, the Alliance indicated that the use of a bar graph to rank vehicles from "fewer emissions" to "more emissions" as proposed in Option 1 "becomes even more difficult and highly subjective for both the California and Federal standards." In the Alliance's view, the Federal bin standards do not necessarily provide an appropriate means to rank vehicles. For example, the Alliance claims that the bin 8, 9, and 10 NMOG standard is less stringent for certain truck classes. In addition, a vehicle certified to a lower bin standard might have more emissions than a vehicle certified to a higher bin standard if the vehicle certified to a higher bin standard meets a more stringent evaporative emission standard. Finally, the Alliance opposed the continued inclusion of specific emissions information on the label because, in its view, the regulations will need revisions in the future because EPA and CARB frequently change emission standards and add new standard categories.[21] The Alliance also commented that as "emission standards for all vehicles have become more stringent, alternative fuels are no longer significantly cleaner than many gasoline fueled vehicles."[22]

NADA also supported the elimination of vehicle emissions information. It noted that the EPA 92 does not require the inclusion of such information. Acknowledging that the FTC concluded that emissions information may prove useful to consumers, NADA believes that the complexity of the Federal and California certification categories makes the emissions information impractical for the alternative fueled vehicle label. In addition, NADA observed that emissions information is already found on under-hood mounted labels, in owners manuals, and on Federal government websites. Instead of emissions information, it suggested the inclusion of an "Environmental Impact" statement on the new vehicle label similar to that found on the used vehicle label.[23]

The ARB staff did not support the inclusion of California emissions information on the label. It stated that California certified vehicles must already be labeled on a visible surface with a "Smog Index Label," which provides a numerical rating of the relative cleanliness of the vehicle pursuant to Title 13, California Code of Regulations, Section 1965. In addition, ARB staff indicated that every California-certified vehicle must have a permanent under-hood label with the emission standard to which the vehicle is certified. ARB staff also stated that separate listings of California information outside the vehicle may be confusing to some consumers. ARB staff, like the Alliance, also observed that the State's original requirements (LEV 1) would have to be permitted on labels because such standards will still be in effect during the phase-in period through the 2006 model year.[24]

3. Additional Information on the Label

AIAM commented that the label should continue to display information regarding fuel type, operating costs, performance/convenience, fuel availability, and energy security/renewability. Most of this information is currently displayed on the back side of the label. AIAM stressed that the label must contain substantive content if it is to have any practical value.

Several commenters addressed whether certain websites should be referenced on the label. The Alliance, AIAM, and NADA all indicated that the label should reference the DOE Alternative Fuels Vehicle Data Center website to point consumers to additional AFV information.[25] They did not support a reference to the EPA's Green Vehicle Guide website. The Alliance suggested that it is difficult to locate the AFV information at the EPA Web site.[26] According to the Alliance, the EPA site covers more than alternative fueled vehicles and, as such, could be confusing for consumers interested only in AFV information.[27] The Alliance supported a reference to the National Highway Traffic Safety Administration's ("NHTSA's") Auto Safety Hotline, as well as to the DOE National Alternative Fuels Hotline.

4. Label Size, Format, and Wording

The Alliance urged the Commission, if the label is retained, to revise section 309.20 to allow optional information such as part numbers, bar codes, and vehicle identification numbers or other markings. The inclusion of a part number would allow tracking and release of the label and would be consistent with ISO (International Organization of Standardization) procedures. As mentioned in this section, the Alliance proposed a consolidated one-sided label that would condense some of the information and would not contain emissions information or a reference to EPA's website. The Alliance also suggested that the Commission retain the label size in the existing rule.[28]

5. Used AFV Label

NADA suggested that the Commission modify the used vehicle label so that it fits on one page and takes into account

[18] AIAM, pp. 1–2.

[19] According to the Alliance, the LEV I program LEV and ULEV emission standards differ based on each of seven different weight classes. The LEV I program also has LEV, ULEV, and SULEV standards that differ from the LEV I program standards. Finally, the Alliance contended that California requires manufacturers to sell vehicles certified to a Federal bin standard in cases where that bin standard is cleaner, on a NMOG + Nox basis, than the California standard to which the vehicles would have been certified in California. Alliance, p. 2.

[20] Alliance, p. 1.

[21] *Id.*, p. 2.

[22] *Id.*, p. 4.

[23] NADA, p. 4.

[24] ARB, p. 1.

[25] Alliance, p. 5; AIAM, p. 2; and NADA, p. 2.

[26] Alliance, p. 5.

[27] NADA, p. 2.

[28] *Id.*

changes made to the new vehicle label.[29]

6. Effective Date and Phase-In Period

Both the Alliance and AIAM urged that Rule amendments become effective the first model year that begins 180 days after the final rule, with the option of earlier compliance.[30] They explained that at least 180 days is needed if the amendments change the size and format of the label. Also, by making the effective date coincide with the new model year, all vehicles in that year would display the same label format.[31]

Part D—Discussion of Comments and Final Rule Amendments

1. Continued Need for Label

The Energy Policy Act of 1992 directs the Commission to "establish uniform labeling" requirements for alternative fuels and alternative fueled vehicles.[32] Although the Act allows the Commission to consolidate requirements with other labels, it does not give the Commission discretion to forgo such requirements altogether. The Commission understands that some commenters believe the label has limited utility because the AFV market is comprised primarily of fleet purchasers that generally have done extensive research before placing orders. The Act, however, does not give the Commission the authority to eliminate AFV labeling requirements completely.

In any event, the Commission believes that the AFV label continues to provide important guidance for consumers. Many consumers may be unfamiliar with important factors to consider when purchasing an AFV. The label provides information consumers can use to educate themselves on the characteristics of AFVs, to the extent they are available in showrooms.[33] Although some of this information can be found elsewhere on the vehicle, such information may be difficult to find (*e.g.*, emissions information on labels found under the hood). Other information, such as cruising range, is not available elsewhere on the vehicle. The Commission recognizes that most of these vehicles are purchased by fleets or other commercial buyers who may have little need for labels affixed to the vehicles. It is difficult, however, to predict the future buying patterns as new developments emerge over time.[34]

In addition, as some of the comments observe, the EPA 92 allows the Commission to consolidate required disclosures for AFVs with other labels where appropriate.[35] The Commission has not identified any viable options for incorporating the information from the FTC label into other labels, such as the fuel economy label as suggested by NADA. In its 1995 final rule document, the Commission concluded that it would not be appropriate to consolidate information the Commission requires into existing labels because those labels do not have sufficient space to accommodate AFV disclosures. That document specifically referenced an EPA statement that the fuel economy label was too "crowded" to incorporate additional AFV information.[36] The Commission has no evidence that the facts underlying its decision have changed.

2. Emissions on Label

The Commission continues to believe that AFV emissions information is important for consumers. The Commission has concluded, however, that the FTC-mandated label is no longer the best means of communicating *vehicle-specific* emissions information. Accordingly, the Commission is amending the Rule to require the inclusion of general guidance on emissions and information to link consumers to EPA's online database (Green Vehicle Guide), which provides detailed information about the emissions characteristics of AFVs and other vehicles.

The Commission has decided to make this label change for several reasons. First, the changes to EPA and California standards increase the complexity of emission information that would have to be provided. The increased number of categories (or "bins") caused by the new Tier 2 EPA standards would make the label information even denser. In addition, if the Commission allowed California emissions certification information to be included on the FTC label, it would further complicate effective presentation of EPA's standards because California uses different terminology, and there is a two-year phase-in period for that State's new requirements.

Second, the development of EPA's website, and the reductions in the emissions from conventional fueled vehicles call into question the continued utility of specific emissions information on the FTC label. EPA's green vehicle guide website presents emissions ratings on a simple scale EPA developed for the website. In contrast, the emissions information on the FTC label does not provide consumers with an easy way to compare the emissions characteristics of AFVs with conventional fuel vehicles because conventional vehicles do not have a similar label on the outside of the vehicle.[37] In the 1995 rulemaking proceeding, the Commission concluded that information relating to emissions of specific AFVs would be useful on the label to aid consumers choosing or deciding whether to replace an existing vehicle with an alternative fueled vehicle. The Commission also cited to DOE materials that suggested that alternative fuels produce lower amounts of air toxics and ozone forming emissions than gasoline. 60 FR at 26946.

Since the 1995 rulemaking, however, the emissions characteristics of both AFVs and gasoline fueled vehicles have changed. As discussed in Part A, EPA promulgated more stringent emissions standards for all vehicles in 2000.[38] According to EPA, these new standards substantially improve the emissions characteristics of all vehicles, including gasoline fueled vehicles.[39] Given these developments, the Commission believes it is appropriate to reconsider the current emissions-related requirements on the label. At its Alternative Fuels Data Center website, DOE explains that the emissions characteristics of alternative fuels continue to provide some advantages over gasoline. At the same time, certain benefits from the use of alternative fuels may be partially offset by other considerations. For instance, according to DOE, compressed natural gas (CNG) vehicles can demonstrate a reduction in ozone-forming emissions (CO and Nox) compared to some conventional fuels but may also increase hydrocarbon

[29] NADA, p. 2.

[30] Alliance, p. 5; and AIAM, p. 2.

[31] Alliance, p. 5.

[32] 42 U.S.C. 13232(a).

[33] According to DOE staff, AFV showroom availability for consumers is limited. DOE's alternative fuels data center Web site (*http://www.afdc.doe.gov*) also indicates that there are a limited number of dedicated AFV dealers and AFV fueling stations nationwide. Further, DOE staff estimate that in 2004, approximately 548,000 AFVs will be on the road. This represents less than one percent of on-road vehicles.

[34] For example, Honda has introduced a compressed natural gas vehicle (the Civic GX). See, *e.g.*, Washington Post, Aug. 29, 2003, p. E02.

[35] 42 U.S.C. 13232(a).

[36] 97 FR at 26950.

[37] As NADA pointed out, emissions information for both conventional fueled vehicles and AFVs is available on under-hood mounted labels. The Commission recognizes, however, that these under the hood emissions labels may be difficult for the average consumer to locate or understand given the limited information provided on the label.

[38] See 65 FR 6698.

[39] *See, e.g.*, "EPA's Program for Cleaner Vehicles and Cleaner Gasoline," Regulatory Announcement (EPA420–F–99–051).

emissions.[40] The emissions ratings found in EPA's Green Vehicle database (at *http://www.epa.gov/greenvehicle*) indicate that alternative fuel vehicles do not consistently yield the best emissions ratings or necessarily yield better emissions scores than their gasoline counterparts in the same vehicle class. The Alliance made a similar observation in its comments stating that alternative fuels are "no longer significantly cleaner than many gasoline fueled vehicles."[41]

The current FTC label does not allow consumers to gauge the significance of the emissions information in the broader context (*i.e.*, when compared to all vehicles on the market, conventional and alternative fueled vehicles). Such comparative information is readily available, however, through the EPA website. The website provides a better, more comprehensive means to provide consumers with complex emissions information about most, if not all, vehicles on the market (excepting heavy vehicles). It also provides a more detailed explanation of the data than is possible on a label on AFVs, which, as noted above, have limited availability in showrooms. The Commission therefore concludes that it is preferable to link consumers to EPA's site than to continue to require vehicle specific emissions information on the label. This will provide a better means for consumers to examine the various costs and benefits of purchasing an AFV than is provided by existing label requirements when no comparable information appears on the labels for conventional fueled vehicles at this time.

Third, as discussed in the proposed rule, the emissions information on the current label is based on standards that change over time. Any label revisions made to reflect the new Tier 2 standards also may become obsolete in the future, necessitating further rulemaking proceedings. The frequency of such revisions is difficult to predict but the Commission believes that referencing the EPA website will more effectively help consumers who want this information.

3. Final Label—Content, Size and Format

After considering the comments, the Commission has decided to follow Option 3 as described in the proposed rule with several modifications.[42] Under these amendments, the label no longer contains a specific reference to EPA's emissions standards, and instead contains a box with a check mark labeled "Emissions" and directs interested consumers to EPA's green vehicle guide website. As discussed in the proposed rule, information on the back of the old label has now been moved to the front. This eliminates the need for a two-sided label and this is likely to reduce compliance costs and the clutter caused by a two-sided label. The label will continue to list specific factors consumers should consider before buying an AFV, as well as referrals to DOE, EPA, and NHTSA for more information about AFVs. In addition, the Commission has added a reference to the joint EPA and DOE fuel economy Web site (*http://www.fueleconomy.gov*), which provides detailed information on gas mileage and cruising range for conventional vehicles and AFVs. The Commission also is amending the Rule to allow the inclusion of part numbers, bar codes, and vehicle identification numbers. This will allow manufacturers to save costs by incorporating this information on the label. It also may aid consumers by providing some specific identifying information for the vehicle to which the label is attached.

4. Used Label

In response to NADA's suggestion, the Commission has modified the used vehicle label so that it fits on one page and takes into account changes made to the new vehicle label. The used label is now Figure 6 of Appendix A.

5. Phase-In Period

The amended label will be mandatory for all covered AFVs produced 180 days after publication of this final rule. The Commission believes that this will give manufacturers ample time to label their vehicles and will ensure that all vehicles launched in the 2006 model year will display the amended label. The Commission recognizes that these amendments, coupled with the new EPA emissions standards, may make it difficult for manufacturers to use labels that are compliant with FTC requirements (which reference old EPA standards) even though their vehicles are being certified to new EPA standards. In light of this, the Commission expects that manufacturers will begin using the amended label as soon as possible. In the meantime, the Commission does not plan to take enforcement action against manufacturers who have sought, in good faith, to display accurate emissions information on the FTC label.

Part E—Regulatory Review

In accordance with its regulatory review schedule, the Commission has conducted a regulatory review of the Rule during this rulemaking proceeding. In the NPR, the Commission sought information about the costs and benefits of the entire Rule and its regulatory and economic impact. Only one commenter directly addressed the Commission's regulatory review questions. As discussed in Part C, the Alliance stated that the alternative fuel vehicle label has outlived its usefulness and is no longer needed. The Rule has limited benefit, according to the Alliance, because very few buyers purchase the vehicles from showroom floors. In addition, the costs of the label must be passed on to purchasers. The Alliance also indicated that the primary way to reduce the costs of compliance would be to delete the label requirement.[43]

As discussed in more detail in Part D, the Act does not give the Commission the authority to eliminate labeling requirements altogether. In the absence of viable means to incorporate requirements into other labels, the Commission has determined to follow the directive in the Act by continuing to require an FTC label for AFV's. In addition, the Commission's label provides consumers with information they can use to educate themselves on the characteristics of the vehicles they are considering.

Part F—Regulatory Analysis

Under section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule only when it (1) estimates that the amendment will have an annual effect on the national economy of $100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has determined that the amendments to the Rule will not have such effects on the national economy or on covered businesses or consumers.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–12, requires that the agency conduct an analysis of the anticipated economic impact of the proposed amendments on small businesses. The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines regulatory

[40] See DOE's Alternative Fuels Data Center (*http://www.afdc.doe/*) (visited Aug. 28, 2003).

[41] Alliance, p. 4.

[42] The Commission has decided to adopt the 7 by 7.5 inch size proposed in Option 3 to accommodate the additional information required on the one-sided label.

[43] Alliance, p. 4.

alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

The Commission has concluded that the proposed Rule amendments will not affect a substantial number of small entities because information the Commission currently possesses indicates that relatively few companies currently manufacture, convert, or sell AFVs. Of those that manufacture, convert, or sell AFVs, most are not "small entities," as that term is defined either in section 601 of RFA, 5 U.S.C. 601(6), or applicable regulations of the Small Business Administration, 13 CFR part 121. Accordingly, the proposed amendments would not appear to have a significant economic impact upon such small entities. Specifically, the AFV label amendments, which will reduce the number of emission standard disclosures, add references to EPA's green vehicle guide and the DOE/EPA fuel economy Web site, and convert a two-sided label to a one-sided one should benefit both small and large businesses. The amendments also should not have a significant or disproportionate impact on the labeling costs of small AFV manufacturers.

Based on available information, therefore, the Commission certifies that amending the Rule will not have a significant economic impact on a substantial number of small businesses.

Part G—Paperwork Reduction Act

The Rule contains various information collection requirements for which the Commission has obtained clearance under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Office of Management and Budget ("OMB") Control Number 3084–0094. As noted above, Section 309.20 of the Rule provides that before offering a new covered AFV for acquisition to consumers, manufacturers must affix on a visible surface of each such vehicle a new vehicle label consisting of three parts. Part one must disclose objective information about the estimated cruising range and environmental impact of the particular AFV.

The Commission has concluded that the amendments would not have an overall effect on the paperwork burden associated with the aforementioned paperwork requirements. Consequently, there are no additional "collection of information" requirements included in the amendments to submit to OMB for clearance under the Paperwork Reduction Act. The Commission's amendments to modify disclosure of emissions information will decrease the Rule's paperwork burden. Further, adding specifically described references on the label to EPA's green vehicle guide and fuel economy Web sites will not significantly increase the Rule's paperwork burden, and likely will be offset by decreases in burden associated with the repeal of specific emissions disclosures.[44]

Thus, the Commission has concluded that the proposed amendments would not increase, or otherwise affect the paperwork burden associated with compliance with the Rule.

List of Subjects in 16 CFR Part 309

Alternative fuel, Alternative fueled vehicle, Energy conservation, Labeling, Reporting and recordkeeping, Trade practices.

■ Accordingly, 16 CFR Part 309 is amended as follows:

PART 309—[AMENDED]

■ 1. The authority citation for Part 309 continues to read as follows:

Authority: 42 U.S.C. 13232(a).

■ 2. Section 309.20 is revised to read as follows:

§ 309.20 Labeling requirements for new covered vehicles.

(a) Affixing and maintaining labels. (1) Before offering a new covered vehicle for acquisition to consumers, manufacturers shall affix or cause to be affixed, and new vehicle dealers shall maintain or cause to be maintained, a new vehicle label on a visible surface of each such vehicle.

(2) If an aftermarket conversion system is installed on a vehicle by a person other than the manufacturer prior to such vehicle's being acquired by a consumer, the manufacturer shall provide that person with the vehicle's estimated cruising range (as determined by § 309.22(a) for dedicated vehicles and § 309.22(b) for dual fueled vehicles) and ensure that new vehicle labels are affixed to such vehicles as required by paragraph (a) of this section.

(b) Layout. Figures 4, 5, and 5.1 are prototype labels that demonstrate the proper layout. All positioning, spacing, type size, and line widths shall be similar to and consistent with the prototype labels. Labels required by this section are one-sided and rectangular in shape measuring 7 inches (17.78 cm) wide and 7½ inches (19.05 cm) long. Figure 4 of appendix A represents the prototype for the labels for dedicated vehicles. Figures 5 and 5.1 of appendix A represent the prototype of the labels for dual-fueled vehicles; Figure 5 of appendix A represents the prototype for vehicles with one fuel tank and Figure 5.1 of appendix A represents the prototype for vehicles with two fuel tanks. No marks or information other than that specified in this subpart shall appear on this label except that the label may include part numbers, bar codes, and vehicle identification numbers consistent with Figures 4, 5, and 5.1.

(c) Type size and setting. The Helvetica Condensed and Helvetica family typefaces or equivalent shall be used exclusively on the label. Specific type sizes and faces to be used are indicated on the prototype labels (Figures 4, 5, and 5.1 of appendix A). No hyphenation should be used in setting headline or text copy. Positioning and spacing should follow the prototypes closely.

(d) Colors and Paper Stock. All labels shall be printed in process black ink on Hammermill Offset Opaque Vellum/ S.70 Sky Blue (or equivalent) paper.

(e) Content. (1) Headlines and text, as illustrated in Figures 4, 5, and 5.1 of appendix A, are standard for all labels.

(2) Estimated cruising range. (i) For dedicated vehicles, determined in accordance with § 309.22(a).

(ii) For dual fueled vehicles, determined in accordance with § 309.22(b).

■ 3. Section 309.21 is revised to read as follows:

§ 309.21 Labeling requirements for used covered vehicles.

(a) Affixing and maintaining labels. Before offering a used covered vehicle for acquisition to consumers, used vehicle dealers shall affix and maintain, or cause to be affixed and maintained, a used vehicle label on a visible surface of each such vehicle.

(b) Layout. Figure 6 of appendix A is the prototype label that demonstrates the proper layout. All positioning, spacing, type size, and line widths should be similar to and consistent with the prototype label. The label required by this section is one-sided and rectangular in shape measuring 7 inches (17.78 cm) in width and 7½ inches (19.05 cm) in height. No marks or information other than that specified in this subpart shall appear on this label, except that the label may include part numbers, bar codes, and vehicle

[44] The public disclosure of information originally supplied by the federal government to the recipient for the purpose of disclosure to the public is not included within the definition of "collection of information" in the Paperwork Reduction Act, 5 CFR 1320.3(c)(2).

identification numbers consistent with Figure 6.

(c) Type size and setting. The Helvetica Condensed and Helvetica family typefaces or equivalent shall be used exclusively on the label. Specific type sizes and faces to be used are indicated on the prototype label (Figure 6 of appendix A). No hyphenation should be used in setting headline or text copy. Positioning and spacing should follow the prototype closely.

(d) Colors and Paper Stock. All labels shall be printed in process black ink on Hammermill Offset Opaque Vellum/ S.70 Sky Blue (or equivalent) paper.

(e) Contents. Headlines and text, as illustrated in Figure 6 of appendix A, are standard for all labels.

■ 4. Appendix A to Part 309 is amended by removing Figures 7, and 8 and revising Figures 4, 5, 5.1, and 6 to read as follows:

Appendix A to Part 309—Figures for Part 309

* * * * *

ALTERNATIVE FUELED VEHICLE BUYERS GUIDE

Compare the Cruising Range of this Vehicle with Other Alternative Fueled Vehicles (AFVs) Before You Buy

Manufacturer's Estimated Cruising Range

440-520

Miles on one tank or charge.

Actual cruising range will vary with options, driving conditions, driving habits, and vehicle condition.

Before Selecting An Alternative Fueled Vehicle Consider:

- ☑ **FUEL TYPE AND AVAILABILITY:** Know which fuel(s) power this vehicle. Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.
- ☑ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably. Visit www.fueleconomy.gov.
- ☑ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.
- ☑ **ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.
- ☑ **EMISSIONS:** Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit www.epa.gov/greenvehicle.

Additional Information

DEPARTMENT OF ENERGY (DOE)
For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, or visit DOE's Alternative Fuels Data Center website, www.afdc.doe.gov.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)
For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-9393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309.
For more information call toll-free (877) FTC-HELP or visit www.ftc.gov.

Space Reserved for Part Numbers, Bar Codes, and Vehicle Identification Numbers

← 7 inches →

↑ 7.5 inches ↓

Figure 4

ALTERNATIVE FUELED VEHICLE BUYERS GUIDE

Compare the Cruising Range of this Vehicle with Other Alternative Fueled Vehicles (AFVs) Before You Buy

Manufacturer's Estimated Cruising Range	
400-480 Miles on one tank or charge exclusively on alternative fuel	**440-520** Miles on one tank exclusively on gasoline/diesel

Actual cruising range will vary with options, driving conditions, driving habits and vehicle condition.

Before Selecting An Alternative Fueled Vehicle Consider:

- ☑ **FUEL TYPE AND AVAILABILITY:** Know which fuel(s) power this vehicle. Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.
- ☑ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably. Visit www.fueleconomy.gov.
- ☑ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.
- ☑ **ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.
- ☑ **EMISSIONS:** Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit www.epa.gov/greenvehicle.

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← 7.5 inches →

← 7 inches →

Figure 5

ALTERNATIVE FUELED VEHICLE BUYERS GUIDE

Compare the Cruising Range of this Vehicle with Other Alternative Fueled Vehicles (AFVs) Before You Buy

Manufacturer's Estimated Cruising Range	
400-480	**440-520**
Miles on one tank or charge exclusively on alternative fuel	**Miles on one tank exclusively on gasoline/diesel**

The total possible cruising range of this vehicle is the sum of the alternative fuel range and the conventional fuel range. Actual cruising range will vary with options, driving conditions, driving habits, and vehicle condition.

Before Selecting An Alternative Fueled Vehicle Consider:

☑ **FUEL TYPE AND AVAILABILITY:** Know which fuel(s) power this vehicle. Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.

☑ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably. Visit www.fueleconomy.gov.

☑ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.

☑ **ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.

☑ **EMISSIONS:** Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit www.epa.gov/greenvehicle.

Additional Information

DEPARTMENT OF ENERGY (DOE)
For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, or visit DOE's Alternative Fuels Data Center website, www.afdc.doe.gov.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)
For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-9393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309.
For more information call toll-free (877) FTC-HELP or visit www.ftc.gov.

← 7.5 inches →

← 7 inches →

Figure 5.1

ALTERNATIVE FUELED VEHICLE BUYERS GUIDE

Before Selecting An Alternative Fueled Vehicle Consider:

☑ **FUEL TYPE AND AVAILABILITY:** Know which fuel(s) power this vehicle. Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.

☑ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably. Visit www.fueleconomy.gov.

☑ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.

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Additional Information

DEPARTMENT OF ENERGY (DOE)
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NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)
For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-9393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309.
For more information call toll-free (877) FTC-HELP or visit www.ftc.gov.

← 7.5 inches →

← 7 inches →

Figure 6

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–20673 Filed 9–13–04; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

[Docket No. DEA–192F]

RIN 1117–AA56

Exemption From Import/Export Requirements for Personal Medical Use

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration (DEA) is amending its regulations to expressly incorporate the restrictions on personal use importation imposed by Congress in 1998 and to expand upon those restrictions to curtail the diversion that has continued even after the 1998 congressional amendment. Specifically, DEA is limiting to 50 dosage units the total amount of controlled substances that a United States resident may bring into the United States for legitimate personal medical use when returning from travel abroad at any location and by any means. This regulation will help prevent importation of controlled substances for unlawful use while still accommodating travelers who have a legitimate medical need for controlled substances during their journey.

EFFECTIVE DATE: October 14, 2004.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: DEA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on September 11, 2003 (68 FR 53529), proposing to amend its regulations to incorporate restrictions on personal use importation of controlled substances imposed by Congress in 1998 and expand upon those restrictions as Congress contemplated to curtail continued diversion. In 1998, Congress amended a provision of the Controlled Substances Import and Export Act (CSI&EA) (21 U.S.C. 956) to limit to 50 dosage units the amount of a controlled substance that a United States resident [1] may bring into the country through an international land border for personal medical use without a prescription. Congress took this action because it had become aware that many individuals were exploiting the regulation that implements 21 U.S.C. 956(a) as a means of bringing controlled substances into the United States for illicit use. Because the law, even after the amendment made by Congress in 1998, continues to be used by many for diversion of controlled substances, and because Congress envisioned that DEA would fine tune the law over time, DEA is expanding upon the 1998 restrictions to limit to a combined total of 50 dosage units all controlled substances that a United States resident may bring into the United States for legitimate personal medical use when returning from travel abroad. The rule being finalized here applies to all United States residents who return to the United States at any location and by any means (not just travelers returning to the United States through a land border with Canada or Mexico). This rule does not allow United States residents to travel to a foreign country for the sole purpose of obtaining controlled substances to bring to the United States. Further, as DEA stated in a Notice published in the **Federal Register** June 29, 2004: "The personal medical use exemption does not apply to the shipment of controlled substances into the United States from a foreign country, regardless of whether the individual receiving the shipment possesses a valid prescription issued by a United States practitioner for the controlled substances, and regardless of the fact that those controlled substances are intended for the personal medical use of an individual." (69 FR 38922).

[1] For purposes of this rule, a United States resident is a person whose residence (*i.e.*, place of general abode—meaning one's principal, actual dwelling place in fact, without regard to intent) is in the United States.

Background

The CSI&EA prohibits the importation of controlled substances into the United States, and the exportation of controlled substances from the United States, except as authorized by the Act (21 U.S.C. 952, 953, 957, 960). In general, only persons who are registered with DEA to import or export controlled substances may do so (*Id*). In addition, depending on the schedule of the controlled substance being imported or exported, the CSI&EA requires the appropriate permit, notification, or declaration, as specified in the DEA regulations (*Id.*; 21 CFR 1312.11–1312.30). These requirements are necessary and appropriate to ensure that international shipments of controlled substances are limited to that which is necessary to meet the medical, scientific, and other legitimate needs of the country of destination and to prevent diversion of dangerous drugs into illicit channels. In addition, these requirements are necessary to meet United States obligations to control drugs of abuse in accordance with international treaties to which the United States is a party, including the Single Convention on Narcotic Drugs, 1961 (Single Convention), and the Convention on Psychotropic Substances, 1971 (Psychotropic Convention).

The CSI&EA makes a limited allowance, however, for travelers entering and departing the United States who have a legitimate medical need for controlled substances during their journey. As set forth in 21 U.S.C. 956, the Administrator of DEA [2] may, by regulation, exempt an individual traveler from application of the CSI&EA requirements regarding importation and exportation of controlled substances where such traveler possesses a controlled substance (except a substance in Schedule I) for the traveler's personal medical use, provided the controlled substance was obtained lawfully and the traveler makes the appropriate declaration or notification to the Bureau of Customs and Border Protection (CBP).[3] These requirements are specified in 21 CFR 1301.26 and have been part of the regulations since the CSI&EA was enacted in 1970.

The allowance for personal use importation and exportation is consistent with United States treaty obligations. Article 4(a) of the Psychotropic Convention states: "In respect of psychotropic substances other than those in Schedule I, the Parties may permit * * * the carrying by international travellers of small quantities of preparations for personal use; each Party shall be entitled, however, to satisfy itself that these preparations have been lawfully obtained."

The Official Commentary to the Psychotropic Convention explains the purpose and meaning of article 4(a): "Paragraph (a) applies only to small quantities needed for personal use, *i.e.*, to such quantities as the traveller may require during his journey or voyage and until he is able to provide himself with the medicine in question in the country of destination."

[2] The Attorney General has delegated to the Administrator of DEA functions vested in the Attorney General by the CSA. 28 CFR 0.100.

[3] Effective March 1, 2003, the United States Customs Service underwent organizational changes under the Homeland Security Act of 2002. As a result of this reorganization, travelers entering or departing the United States with controlled substances will be required to make the appropriate declaration or notification referenced in 21 CFR 1301.26 to the appropriate official from the Bureau of Customs and Border Protection (CBP).

It bears emphasis that 21 U.S.C. 956 does not require DEA to permit any minimum amount of controlled substances to be imported or exported for personal medical use. Rather, consistent with article 4(a) of the Psychotropic Convention, Congress gave DEA permissive authority to issue a regulation allowing personal use importation/exportation under such conditions as DEA finds are necessary to prevent diversion of controlled substances into illicit channels and which are consistent with Congressional intent.

Another critical factor is that transporting controlled substances across international borders entails a heightened risk of diversion. Because of this inherent risk of diversion, United States drug control laws and international drug control treaties have, for most of the past century, placed paramount focus on international shipments of drugs of abuse. For example, the CSI&EA has, in general, always prohibited the commercial importation into the United States of controlled substances manufactured abroad, except where domestic production is inadequate to supply the legitimate medical, scientific, research, and industrial needs of the United States. In this manner, drug control authorities in the United States can maintain oversight over the handling of controlled substances from the point of manufacture to the point of dispensing to the ultimate user. Such complete oversight is essential to preventing diversion of controlled substances. This is precisely why Congress made the "'closed' system of drug distribution" the hallmark of the CSA.[4]

The allowance of importation and exportation of controlled substances for personal medical use (first established by Congress in 1970 and codified in 21 U.S.C. 956) was meant to strike an appropriate balance between the significant risk of diversion associated with the carrying of controlled substances across international borders and the desire to accommodate the legitimate medical needs of travelers during their actual travel between countries. Stated alternatively, the allowance was meant to accommodate those who have an unavoidable legitimate medical need to import (or export) controlled substances as a result of their travel. The allowance was *not* meant to encourage United States residents to travel abroad to obtain their controlled substances for use in this country. To encourage such obtaining of controlled substances abroad would be to diminish the closed system of drug distribution intended by Congress under the CSA.

Why Congress Amended the Law in 1998

In 1998, Congress became concerned that 21 U.S.C. 956 and the DEA regulation implementing this provision were being misused by individuals—particularly United States residents—whose true intent was to divert controlled substances obtained abroad for illicit use in the United States (rather than to carry lawfully obtained controlled substances acquired for legitimate personal medical use during the course of travel). Due to this concern, Congress amended 21 U.S.C. 956 to limit to 50 dosage units the amount of a controlled substance that a United States resident may bring into the country through an international land border for personal medical use without a prescription. This amendment was contained in a bill entitled the "Controlled Substances Trafficking Prohibition Act" (Pub. L. 105–357), which was enacted November 10, 1998.

The sponsor of the bill in the House of Representatives, Representative Chabot of Ohio, explained the purpose of the amendment as follows:

> This important initiative [the amendment to 21 U.S.C. 956] will close a loophole in Federal law that allows dangerous drugs, particularly drugs used in connection with date rape, to be legally imported into the United States.
>
> Federal, State and local law enforcement agencies have raised serious concerns about the trafficking of controlled substances from Mexico. Right now uppers, downers, hallucinogens and date rape drugs similar to Rohypnol may be easily obtained from so-called health care providers or pharmacists in Mexico with no documentation of medical need whatsoever.
>
> According to DEA, these drugs are frequently resold illegally in the United States. * * *

144 Cong. Rec. H6903–01, H6904 (August 3, 1998).

Discussion of Comments

DEA received two comments in response to the Notice of Proposed Rulemaking published in the **Federal Register** on September 11, 2003 (68 FR 53529). One commenter disagreed with the proposed rulemaking and the other commenter supported the proposed rulemaking with additional requirements. Both commenters were individual citizens.

One commenter stated that DEA "was interpreting the [1998] amendment incorrectly and changing the meaning of 50 dosage units" by limiting to 50 dosage units the total amount of controlled substances that a United States resident may bring into the United States for legitimate personal medical use when returning from travel abroad.

The 1998 amendment to the CSI&EA limited the amount of a controlled substance a United States resident could bring into the country through an international land border for personal medical use without a prescription to a maximum (not a minimum) of 50 dosage units of the controlled substance. During the hearings preceding enactment of the amendment, Senator Leahy stated that the 1998 amendment to the CSI&EA was "only a stopgap measure." (144 Cong. Rec. S. 12680–04, 12681 (October 20, 1998)). Senator Leahy explained: "What constitutes 'personal use' is a complicated issue that will turn on a number of circumstances, including the nature of the controlled substance and the medical needs of the individual. It is the sort of issue that should be addressed not through single-standard legislation but through measured regulations passed by an agency with the expertise in this matter." He directed "the Department of Justice [DEA by delegation of authority] to study the problems and to pass regulations that are more finely tuned to address those problems" (*id.*). By this final rule DEA is carrying out its obligations in the manner that Senator Leahy suggested—by reevaluating the situation following passage of the 1998 amendment and issuing more fine-tuned regulations to better achieve Congress' goal of minimizing the exploitation of the law for purposes of diversion.

The second commenter supported the proposed rulemaking, but did not consider it restrictive enough. The commenter proposed a dual approach—not permitting any controlled substance to enter the United States without a "U.S. prescription" and also limiting the amount of controlled substances imported. The commenter would base the amount of controlled substance allowed on its schedule (50 dosage units for Schedule II; 100 dosage units for Schedule III; 150 dosage units for Schedule IV, and 200 dosage units for Schedule V).

DEA believes that limiting the personal medical use allowance to those who obtained controlled substances pursuant to prescriptions issued by

[4] *See* House Report No. 91–1444, 1970 U.S.C.C.A.N. 4566–4572. "The [CSA] provides for control by the Justice Department of problems related to drug abuse through registration of manufacturers, wholesalers, retailers, and all others in the legitimate distribution chain, and makes transactions outside the legitimate distribution chain illegal." *Id.*

United States practitioners is too restrictive and inconsistent with the purpose of the law, which is to accommodate travelers' legitimate medical needs for controlled substances, or those of an animal accompanying them, during the course of their travel. There are instances when United States travelers may legitimately need to see a foreign doctor and be given a controlled substance by the foreign doctor and thus would not have a prescription issued by a practitioner in the United States. Under such circumstances, according to the commenter's proposal, the returning United States residents would have these controlled substances confiscated upon entry into the United States, even if the travelers still have a legitimate need for the medications until they can see their own doctors.

The commenter also suggested allowing a greater quantity of controlled substances in a lower schedule to be imported than in a higher one because they have a lower potential for abuse. The importation of any controlled substance for personal medical use is based on medical need and not on the schedule of the controlled substance. Only necessary controlled substances are allowed to be imported. This suggested requirement would also become confusing and time-consuming for the Bureau of Customs and Border Protection to enforce given the large number of controlled substances that exist and the number of travelers entering and leaving the United States.

Final Rule Expands Current Requirements for Personal Use Importation

This final rule expands upon, but does not eliminate, the requirements currently in effect as a result of Congress' 1998 amendment to 21 U.S.C. 956.

Under the current regulation, 21 CFR 1301.26, any individual may enter or depart the United States with a controlled substance listed in Schedule II, III, IV, or V, which he/she has lawfully obtained for his/her personal medical use, or for administration to an animal accompanying him/her, provided that the following conditions are met:

(a) The controlled substance is in the original container in which it was dispensed to the individual; and

(b) The individual makes a declaration to an appropriate official of the Bureau of Customs and Border Protection stating:

(1) That the controlled substance is possessed for his/her personal use, or for an animal accompanying him/her; and

(2) The trade or chemical name and the symbol designating the schedule of the controlled substance if it appears on the container label, or, if such name does not appear on the label, the name and address of the pharmacy or practitioner who dispensed the substance and the prescription number, if any; * * *

21 CFR 1301.26.

The 1998 amendments to the CSI&EA made by Congress added restrictions that are *in addition to* the foregoing requirements in the DEA regulations. These amendments are contained in 21 U.S.C. 956(a)(2). This subsection provides that, where a United States resident is returning to this country through a land border (*i.e.*, returning by land from Mexico or Canada), and such person seeks to bring into the country a controlled substance obtained abroad for personal medical use (not obtained pursuant to a prescription issued by a DEA registrant), such person may bring in no more than 50 dosage units of the controlled substance.

This final rule specifies that the 50 dosage unit limit mandated by Congress under 956(a)(2) applies to *the combined total of all controlled substances that the returning United States traveler seeks to import for personal medical use* (rather than up to 50 dosage units of each of a variety of controlled substances).[5]

DEA believes that this approach strikes an appropriate balance between the need to prevent diversion of controlled substances for illicit purposes and the legitimate medical needs of United States residents to lawfully carry controlled substances for a legitimate medical purpose during the course of their travel. To reiterate, the purpose of the international treaties, Federal law, and this regulation is to permit travelers to carry, on their person, small quantities of controlled substances, lawfully obtained in a foreign country for legitimate medical use, until the traveler is able to obtain the medicine in question in the country of destination. As noted above, Congress intended when it revised the law in 1998 that DEA would implement additional restrictions as warranted to prevent any continued misuse of the law for illicit purposes. Restricting to 50 dosage units the total number of all controlled substances that may be imported by United States residents who legitimately obtained the controlled substances abroad fits within this Congressional mandate.

To promote uniform enforcement, this final rule applies to all United States residents who return to the United States at any location and by any means (not just travelers returning to the United States through a land border with Canada or Mexico).

Total Limit of 50 Dosage Units for a Returning Traveler's Legitimate Personal Medical Use

Many persons appear to be under the mistaken impression that Congress' 1998 amendment to 21 U.S.C. 956 was intended to allow United States residents to travel to Mexico or Canada, purchase controlled substances, then return to the United States with up to 50 dosage units "no questions asked." It is DEA's intention, through this publication, to end any such misconceptions. In 1998 Congress placed a *limit* of 50 dosage units on the amount of a controlled substance that may be imported by United States residents entering from Mexico or Canada; Congress did not eliminate any of the existing requirements established by DEA in its regulation governing personal use importation (21 CFR 1301.26). Nor did Congress preclude DEA from imposing more restrictive requirements by regulation. It remains true that *all persons who wish to import controlled substances for personal medical use may do so only for legitimate personal medical use and must satisfy all of the requirements in 21 CFR 1301.26.* The requirements found in Section 1301.26 are necessary to ensure that the drugs possessed by the traveler will actually be used by the traveler for legitimate personal medical use; Congress had no intention of eliminating these appropriate safeguards against diversion.

In all instances, if there is evidence that the traveler is attempting to bring into the United States controlled substances (in any amount) for other than legitimate personal medical use, the importation does not comport with either the statute (21 U.S.C. 956) or the DEA regulation (21 CFR 1301.26) and must be disallowed. The Bureau of Customs and Border Protection official should, of course, take into account all facts and circumstances of a particular case in determining whether the traveler is attempting to bring in controlled substances for legitimate personal medical use or attempting to do so in order to divert the drugs for illicit use. Though neither dispositive nor exhaustive, the following factors may, depending on the circumstances, be indicative of diversion: (i) The same traveler has made repeated attempts over a short period of time to import controlled substances for claimed personal medical use; (ii) the traveler is carrying a variety of different controlled

[5] For purposes of this rule, a dosage unit is the basic unit used to quantify the amount to be taken in normal usage (*i.e.*, tablet, capsule, or teaspoonful (5 ml)).

substances that are either contraindicated or in a combination that is commonly used by drug abusers.

DEA wishes to clarify, however, that the amendment to the regulation being finalized here does not apply to controlled substances lawfully obtained by a United States resident within the United States for a legitimate medical purpose which the United States resident then carries with them during the course of their foreign travel—provided such traveler otherwise meets all requirements of 21 CFR 1301.26. In such a circumstance, because these controlled substances were lawfully obtained by a United States resident within the United States, it is appropriate not to impose the 50 dosage unit restriction when the traveler returns to the United States with the controlled substances in their original container. This is consistent with Congress' chief concern in enacting the 1998 amendment—to prevent persons from obtaining controlled substances abroad for illicit purposes in the United States. To ensure that this is clear, DEA is revising paragraph (c) of 21 CFR 1301.26 from that which was proposed to note that the requirements of this paragraph apply solely to controlled substances obtained abroad.

Foreign Travelers

By its express terms, Congress' 1998 amendment, which imposed the 50 dosage unit limit, applies only to United States residents; it does *not* apply to foreign travelers entering the United States. Rather, this Final Rule will apply only to United States residents.

Having made this distinction, it must be emphasized that all travelers—United States residents or non-United States residents—may only import (or export) controlled substances for *legitimate personal medical use* and must comply fully with all of the current provisions of 21 CFR 1301.26. These requirements, which have been part of the CSI&EA implementing regulations since 1971, have not changed and are unaffected by this rulemaking.

Thus, regardless of the quantity possessed, *any* individual, including a foreign traveler, possessing a Schedule II, III, IV or V controlled substance lawfully obtained for the individual's personal medical use, or for administration to an animal accompanying the individual, may enter the United States with the controlled substance, provided that the individual declares their possession of the controlled substance to an appropriate official of the Bureau of Customs and Border Protection, including the reason for possession (*i.e.*, intended for the individual's personal medical use or the administration to an animal accompanying the individual). The individual must also state the trade or chemical name and the symbol designating the schedule of the controlled substance if it appears on the container label, or, if such name does not appear on the label, the name and address of the pharmacy or practitioner who dispensed the substance and the prescription number. Finally, the controlled substance must be in the original container in which it was dispensed to the individual (21 CFR 1301.26(a) and (b)).

The Combined 50 Dosage Unit Limit and Congress' 1998 Amendment to the CSI&EA

On its face, the 1998 amendment to the CSI&EA (contained in 21 U.S.C. 956(a)(2)) does not mandate that United States residents be allowed to bring into the United States 50 dosage units of each of a variety of controlled substances purchased abroad. Rather, 50 dosage units is the *maximum* amount of a controlled substance that DEA may permit, through regulation, to be imported for personal medical use without a prescription. As explained above, Congress in 1998 was responding to the exploitation of the personal use allowance by persons seeking to divert controlled substances. Congress recognized that DEA would continue to monitor the situation and, if necessary, modify its regulation to impose tighter controls.

Indeed, recently obtained information indicates that the misuse of the personal use importation allowance persists even after the 1998 amendment by Congress. Thus, revising the DEA regulations such that the 50 dosage unit limit enacted by Congress applies to the combined total of all controlled substances in the traveler's possession is a necessary and appropriate step to further curtail the misuse of the personal use importation exception. DEA will continue to monitor the situation to determine whether future revisions to the regulation are needed to maintain adequate safeguards against diversion.

Meaning of "Lawfully Obtained" in the Context of Personal Use Importation

Both the statute (21 U.S.C. 956) and the DEA regulation (21 CFR 1301.26) allow personal use importation only where the controlled substances were "lawfully obtained" by the traveler abroad. In harmony with international drug control treaties, many countries, including Canada and Mexico, have laws that govern the prescribing and dispensing of controlled substances. For example, as is the case in the United States, Canadian law allows pharmacies to dispense controlled substances only pursuant to a prescription issued by a practitioner licensed to prescribe controlled substances in the province in which the controlled substance is dispensed.

The traveler seeking to carry, on their person, into the United States controlled substances obtained abroad for personal medical use may only do so if the controlled substances were dispensed in full compliance with the laws of the country in which they were obtained. It is the duty of the individual seeking to import a controlled substance for personal medical use pursuant to 21 U.S.C. 956(a) and DEA's regulation to know and comply with the laws of the jurisdiction in which the controlled substance was dispensed. Additionally, while DEA has eliminated the original paragraph (c) of 21 CFR 1301.26 which stated: "The importation of the controlled substance for personal medical use is authorized or permitted under other Federal laws and state law." as being redundant, compliance with the CSI&EA and DEA's regulation does not excuse noncompliance with other Federal laws and state laws that may regulate the importation of controlled substances. As 21 CFR 1307.02 states: "Nothing in this chapter shall be construed as authorizing or permitting any person to do any act which such person is not authorized or permitted to do under other Federal laws or obligations under international treaties, conventions or protocols, or under the law of the State in which he/she desires to do such act * * *".

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation affects only individual travelers and personal use quantities of controlled substances. Small businesses are subject to other DEA regulations for the importation and exportation of controlled substances, including registration, recordkeeping, reporting and security requirements. Businesses would not be using the personal use importation exemption to bring controlled substances into the United States. In fact, this rule could help small businesses as United States residents

will purchase controlled substances from United States pharmacies rather than traveling outside the United States to make such purchases.

Executive Order 12866

The Deputy Administrator further certifies that this rulemaking has been drafted in accordance with the principles of Executive Order 12866, Section 1(b). This action has been determined to be a significant regulatory action. Therefore, this regulation has been reviewed by the Office of Management and Budget.

Executive Order 12988

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

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year, and would not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

■ For the reasons set out above, 21 CFR Part 1301 is amended as follows:

PART 1301—[AMENDED]

■ 1. The authority citation for 21 CFR Part 1301 is revised to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877, 951, 952, 953, 956, 957.

■ 2. Section 1301.26 is revised to read as follows:

§ 1301.26 Exemptions from import or export requirements for personal medical use.

Any individual who has in his/her possession a controlled substance listed in schedules II, III, IV, or V, which he/she has lawfully obtained for his/her personal medical use, or for administration to an animal accompanying him/her, may enter or depart the United States with such substance notwithstanding sections 1002–1005 of the Act (21 U.S.C. 952–955), provided the following conditions are met:

(a) The controlled substance is in the original container in which it was dispensed to the individual; and

(b) The individual makes a declaration to an appropriate official of the Bureau of Customs and Border Protection stating:

(1) That the controlled substance is possessed for his/her personal use, or for an animal accompanying him/her; and

(2) The trade or chemical name and the symbol designating the schedule of the controlled substance if it appears on the container label, or, if such name does not appear on the label, the name and address of the pharmacy or practitioner who dispensed the substance and the prescription number.

(c) In addition to (and not in lieu of) the foregoing requirements of this section, a United States resident may import into the United States no more than 50 dosage units combined of all such controlled substances in the individual's possession that were obtained abroad for personal medical use. (For purposes of this section, a United States resident is a person whose residence (*i.e.*, place of general abode—meaning one's principal, actual dwelling place in fact, without regard to intent) is in the United States.) This 50 dosage unit limitation does not apply to controlled substances lawfully obtained in the United States pursuant to a prescription issued by a DEA registrant.

Dated: September 1, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–20628 Filed 9–13–04; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[Docket No. IN–155–FOR]

Indiana Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Indiana regulatory program (Indiana program) and abandoned mine land reclamation plan (Indiana plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Indiana proposed revisions to and additions of statutes about performance bond release, the Indiana bond pool, and government-financed construction. Indiana intends to revise its program to be consistent with SMCRA and to improve operational efficiency.

DATES: Effective September 14, 2004.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (317) 226–6700. Internet address: *IFOMAIL@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program and Indiana Plan

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Indiana program effective July 29, 1982. You can find background information on the Indiana program, including the Secretary's findings, the disposition of

comments, and the conditions of approval, in the July 26, 1982, **Federal Register** (47 FR 32071). You can also find later actions concerning the Indiana program and program amendments at 30 CFR 914.10, 914.15, 914.16, and 914.17.

The Abandoned Mine Land Reclamation program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Indiana plan effective July 29, 1982. You can find background information on the Indiana plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the July 26, 1982, **Federal Register** (47 FR 32108). You can find later actions concerning the Indiana plan and amendments to the plan at 30 CFR 914.25.

II. Submission of the Amendment

By letter dated June 2, 2004 (Administrative Record No. IND–4728), the Indiana Department of Natural Resources (Department) sent us House Enrolled Act 1203 (HEA 1203) as an amendment to its program and plan under SMCRA (30 U.S.C. 1201 *et seq.*). HEA 1203 contains numerous amendments to the State statutes, but only those that pertain to the Indiana program or plan were considered in this final rule document. The Department sent the amendment to us at its own initiative. Sections 26 and 27 of HEA 1203 amend Indiana Code (IC) 14–34–6–7 and 14–34–6–10, respectively, concerning performance bond release. Sections 28, 29, and 30 of HEA 1203 amend IC 14–34–8–4, 14–34–8–6, and 14–34–8–11, respectively, concerning the Indiana bond pool. Sections 1, 31, and 32 of HEA 1203 amend or add IC 14–8–2–117.3, 14–34–19–15, and 2004–71–32, respectively, concerning government financing of abandoned mine land reclamation projects that involve the incidental extraction of coal.

We announced receipt of the proposed amendment in the July 19, 2004, **Federal Register** (69 FR 42927). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 18, 2004. We received comments from one Federal agency.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15, 732.17, 884.14, and 884.15. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

A. Performance Bond Release

Sections 26 and 27 of HEA 1203 amend the requirements of the Indiana program concerning performance bond release.

1. Section 26 of HEA 1203 amended IC 14–34–6–7 by designating the existing text as subsection (a) and by adding new subsection (b), which allows the Director of the Department of Natural Resources (Director) to initiate an application for the release of a performance bond. If the Director initiates an application for performance bond release, the Department must perform all notification and certification requirements otherwise imposed on the permittee.

While the counterpart Federal regulation at 30 CFR 800.40(a) allows a permittee to file an application for bond release, the Federal regulations are silent as to whether a regulatory authority may initiate bond release proceedings. However, a similar provision was approved for the Kentucky program on December 31, 1990 (55 FR 53490), and the Illinois program on April 7, 2000 (65 FR 18239). Under Indiana's proposal, bond release proceedings initiated by the Director must conform to the same procedural steps as a bond release initiated by the permittee. Thus, the public participation and notification requirements of section 519 of SMCRA and the Federal regulations at 30 CFR 800.40 would still apply when the Director initiates a bond release in Indiana. For the above reasons, we find that allowing the Director to initiate bond release does not make Indiana's performance bond release requirements at IC 14–34–6–7 less stringent than section 519(a) of SMCRA or less effective than the Federal regulation at 30 CFR 800.40(a). Therefore, we are approving the revisions to IC 14–34–6–7. It is our understanding that Indiana will revise its implementing regulation at 312 Indiana Administrative Code (IAC) 25–5–16 to reflect the changes made to IC 14–34–6–7 in a future State program amendment.

2. Indiana's statute at IC 14–34–6–7 requires the requester of a performance bond release to publish a notice of the bond release request. Previously, only a permittee could request bond release and, therefore, must publish a notice (permittee's notice). In this rulemaking, Indiana proposed to allow the Director to initiate bond release proceedings. As a result, either the permittee or the Director is required to publish the notice depending on who initiated the bond release request. Therefore, section 27 of HEA 1203 amended IC 14–34–6–10(b)(2) by removing the word "permittee's" from the phrase "after the last publication of the permittee's notice." This change allows specified persons to request a public hearing regarding a performance bond release request within thirty (30) days after the last publication of the notice, regardless of who initiated the bond release request.

This change is appropriate and further clarifies that the notification requirements for bond release must be completed, regardless of whether the application was initiated by the permittee or the Director. We find that the change made to IC 14–34–6–10(b)(2) will not make it less stringent than section 519(f) of SMCRA or less effective than the counterpart Federal regulation at 30 CFR 800.40(f).

B. Indiana Bond Pool

Sections 28, 29, and 30 of HEA 1203 amend the requirements of the Indiana program concerning Indiana's alternative bonding system (Indiana bond pool).

1. Section 28 of HEA 1203 amended IC 14–34–8–4(g) and (h) by adding the phrase "unless the operator has replaced all bond pool liability with bonds acceptable under IC 14–34–6–1" at the end of each paragraph. Subsection (g) pertains to those operators who participate in the bond pool on the basis of the entire permit area. This subsection previously provided that commencement of participation in the bond pool for the applicable permit constitutes an irrevocable commitment to participate in the bond pool for the duration of the surface coal mining permit. Subsection (h) pertains to those operators who participate in the bond pool on the basis of a bond increment area under an existing permit. This subsection previously provided that

commencement of participation in the bond pool for the bond increment area constitutes an irrevocable commitment to participate in the bond pool for the duration of that surface coal mining permit. With the addition of the new phrase at subsections (g) and (h), a mine operator may withdraw from the bond pool by replacing bond pool liability with bonds acceptable under the Indiana surface coal mining and reclamation law.

There is no direct Federal counterpart to IC 14–34–8–4(g) and (h). However, requiring the operator to replace all bond pool liability with bonds acceptable under the Indiana program assures that the regulatory authority will have sufficient money available to complete the reclamation plan in the event of forfeiture, as required by 30 CFR 800.14(b). Also, because participation in the Indiana bond pool is optional, these changes will not affect our original approval of the Indiana bond pool (57 FR 14350, April 20, 1992). Therefore, we find that the changes to subsections (g) and (h) are not inconsistent with the requirements of section 509(c) of SMCRA or the Federal regulation at 30 CFR 800.11(e).

2. Section 29 of HEA 1203 amended IC 14–34–8–6(a) by changing a reference from "subsection (b)" to "subsection (c)" and redesignating existing subsections (b) and (c) as subsections (c) and (d). Section 29 of HEA 1203 also added a new subsection (b) to allow the Director to require operators to withdraw from the bond pool if the final release of a bond has not been obtained within ten years after the date of the last required report of the affected area for the permit, including new disturbances. The operator would have to replace the bond pool liability with bonds acceptable under the Indiana program. If the operator does not comply with the Director's order to withdraw a mine area from the bond pool, the Director may suspend the operator from the bond pool. Redesignated subsection (d) provides that an operator who is suspended must cease all surface mining operations until a new performance bond is furnished. When a new performance bond is executed, the bond pool has no additional liability for reclamation of the mine area.

There is no direct Federal counterpart to new IC 14–34–8–6(b). However, requiring the operator to replace all bond pool liability with bonds acceptable under the Indiana program assures that the regulatory authority will have sufficient money available to complete the reclamation plan in the event of forfeiture, as required by 30 CFR 800.14(b). Also, new subsection (b) will provide an additional economic incentive for the permittee to comply with all reclamation provisions, as required by 30 CFR 800.11(e)(2). Therefore, we find that new subsection (b) is not inconsistent with the requirements of section 509(c) of SMCRA or the Federal regulation at 30 CFR 800.11(e).

3. At IC 14–34–8–11, Section 30 of HEA 1203 amended membership and membership appointment authority of the surface coal mine reclamation bond pool committee (committee). The committee makes recommendations to the Director on proposed expenditures from the bond pool and all new applications for admission to the bond pool. It acts in an advisory capacity to the Director and has no decision making functions.

Section 30 of HEA 1203 amended subdivision (a)(1) by removing the requirement that not more than three of the members belong to the same political party. It changed the authority for the appointment of members from the Governor of Indiana (Governor) to the Director. It also revised clause (a)(1)(C) by removing the requirement that one member of the committee be a representative of the public with a license as a certified public accountant and added the requirement that this member have knowledge of reclamation performance guarantees. Section 30 of HEA 1203 revised subsection (b) by removing the requirement that a member not be appointed to more than two full terms. It also revised subsection (b) to provide that the Director may remove an appointed member for cause. Previously, the Governor was authorized to perform this function. Section 30 of HEA 1203 revised subdivision (e)(1) by requiring the committee to meet as necessary to perform its duties, but not less than one time each year. This subdivision previously required the committee to meet as least two times each year. Section 30 of HEA 1203 amended subsection (f) to require the Director to report annually to the committee and to the Governor on the status of the bond pool. Previous subsection (f) required the Director to report semiannually.

Because the committee acts only in an advisory capacity to the Director, the revisions made to the requirements of subsections (a), (b), (e) and (f) will not affect the objectives and purposes of the Indiana bond pool. Therefore, we find that the revisions to IC 14–34–8–11 are not inconsistent with the requirements of section 509(c) of SMCRA or the Federal regulation at 30 CFR 800.11(e), and we are approving them.

C. Government-Financed Construction

Sections 1, 31, and 32 of HEA 1203 amend or add new requirements to the Indiana program and plan concerning government financing of abandoned mine land reclamation projects that involve the incidental extraction of coal.

1. Indiana Program

a. IC 14–8–2–117.3 Definition of "Governmental Entity"

Section 1 of HEA 1203 amended the definition of "governmental entity" at IC 14–8–2–117.3 by adding a reference to IC 14–34–19–15, which concerns procedures for abandoned mine land reclamation projects receiving less than 50 percent government funding.

Indiana's definition of "governmental entity" lists various types of government entities, including Federal, State, county, city, and other local government bodies. There is no Federal counterpart to this definition. However, we find that the addition of a citation reference concerning the Department's procedures for abandoned mine land reclamation projects receiving less than 50 percent government funding will not make Indiana's previously-approved definition of "governmental entity" inconsistent with any of the requirements of SMCRA or the Federal regulations.

b. IC 2004–71–32 Definition of "Government-Financed Construction"

(1) Section 32 of HEA 1203 added a new definition for "government-financed construction" at IC 2004–71–32(a). This statutory definition is meant to take precedence over the current regulatory definition for "government-financed construction" at 312 IAC 25–1–57. The current definition at 312 IAC 25–1–57 defines "government-financed construction" as construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. The statutory definition provides for the same types of funding for construction funded 50 percent or more, plus provides for funding at less than 50 percent if construction is undertaken as an approved reclamation project under Title IV of SMCRA and the State counterpart statutes at IC 14–34–19. Both definitions provide that the term does not pertain to government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

At IC 2004–71–32(a), Indiana's statutory definition of "government-financed construction" contains language that is substantively similar to

and has the same meaning as the corresponding Federal definition at 30 CFR 707.5. Therefore, we find that IC 2004–71–32(a) is no less effective than the Federal definition, and we are approving it.

(2) Section 32 of HEA 1203 added a provision at IC 2004–71–32(b) that requires the Indiana Department of Natural Resources to amend its regulatory definition of "government-financed construction" at 312 IAC 25–1–57 before July 1, 2006, to correspond with the statutory definition at IC 2004–71–32(a). As discussed above, Indiana's regulatory definition at 312 IAC 25–1–57 does not currently allow for construction that is less than 50 percent government funded.

We agree that Indiana should amend its regulatory definition of "government-financed construction" to correspond with the statutory definition. Although the statutory definition of "government-financed construction" at IC 2004–71–32(a) takes precedence over the currently approved regulatory definition at 312 IAC 25–1–57, State regulations and statutes should be in agreement. Therefore, we are approving IC 2004–71–32(b).

(3) At IC 2004–71–32(c), section 32 of HEA 1203 added a provision which states that IC 2004–71–32 will expire July 1, 2007.

The State of Indiana authorizes its agencies to promulgate regulatory definitions, as well as other rules, needed to implement each agency's specific statutory requirements. Only those definitions that pertain to more than one agency are included in the Indiana Code. Thus, after Indiana amends its regulatory definition of "government-financed construction" at 312 IAC 25–1–57 to correspond with the proposed statutory definition at IC 2004–71–32(a), there will no longer be a need for the statutory definition. Therefore, we are approving IC 2004–71–32(c) with the understanding that Indiana will amend its regulatory definition before the July 1, 2007, expiration date.

2. Indiana Plan

IC 14–34–19–15 Procedures for Abandoned Mine Land Reclamation Projects Receiving Less Than 50 Percent Government Funding

Section 31 of HEA 1203 added IC 14–34–19–15 to require the Department to make specified determinations and maintain specified documentation for abandoned mine land reclamation projects receiving less than 50 percent government funding because of planned coal extraction incidental to the reclamation of an abandoned mine land project. IC 14–34–19–15 outlines the procedures the Department needs to follow in approving abandoned mine land reclamation projects receiving less than 50 percent government funding. The required procedures are intended to ensure the appropriateness of the project being undertaken as an abandoned mine land reclamation project under the Indiana plan and not as a surface coal mining and reclamation operation under the Indiana program.

Because IC 14–34–19–15 contains requirements that are the same as or similar to the corresponding Federal regulation requirements at 30 CFR 874.17, we find that it is no less effective than the Federal regulation. Therefore, we are approving IC 14–34–19–15 as discussed below.

a. IC 14–34–19–15(a)(1) provides that the provisions of IC 14–34–19–15 apply when the Department is considering a mine land reclamation project under IC 14–34–1–2 or 312 IAC 25–2–3. IC 14–34–1–2 provides that the surface coal mining and reclamation law does not apply to the extraction of coal as an incidental part of Federal, State, or local government-financed highway or other construction under rules established by the Indiana program. Indiana's rule at 312 IAC 25–2–3 implements IC 14–34–1–2 by providing an exemption for coal extraction incidental to Federal, State, or local government-financed highway or other construction. IC 14–34–19–15(a)(2) further provides that the provisions of IC 14–34–19–15 apply when the level of funding for the abandoned mine land reclamation project will be less than 50 percent of the total cost because of planned coal extraction.

We find that IC 14–34–19–15(a) has requirements that are similar to and no less effective than the introductory paragraph of the counterpart Federal regulation at 30 CFR 874.17.

b. IC 14–34–19–15(b)(1) requires the Department to make specific determinations regarding the likelihood of the coal being mined under a surface coal mining and reclamation operations permit issued under the Indiana program. Subdivision (b)(2) requires the Department to determine the likelihood that nearby mining activities might create new environmental problems or adversely affect existing environmental problems. Subdivision (b)(3) requires the Department to determine the likelihood that reclamation activities might adversely affect nearby mining activities.

The only difference between IC 14–34–19–15(b) and the counterpart Federal regulation at 30 CFR 874.17(a) is consultation language. The Federal regulation requires the abandoned mine land reclamation agency to consult with the Title V regulatory authority to make the required determinations for funding construction for less than 50 percent of the total cost because of planned coal extraction. Because the Department has the authority for and implements both the Indiana plan and the Indiana program, there is no need for the consultation language. Therefore, we find that IC 14–34–19–15(b) is no less effective than the Federal regulation at 30 CFR 874.17(a).

c. If a decision is made under subsection (b) to proceed with the abandoned mine land reclamation project, IC 14–34–19–15(c) requires the Department to make additional determinations concerning the limits of the incidental coal to be extracted and the delineation of boundaries of the abandoned mine lands reclamation project.

We find that IC 14–34–19–15(c) contains requirements that are substantively similar to and no less effective than the counterpart Federal regulation at 30 CFR 874.17(b).

d. IC 14–34–19–15(d) requires the following documentation to be included in the abandoned mine lands reclamation case file: (1) The determinations made under subsections (b) and (c); (2) the information taken into account in making the determinations; and (3) the names of the persons making the determinations.

We find that IC 14–34–19–15(d) is substantively identical to and no less effective than the counterpart Federal regulation at 30 CFR 874.17(c).

e. For each project, IC 14–34–19–15(e) requires the Department to (1) characterize the site regarding mine drainage, active slide and slide prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrological balance; (2) ensure that the reclamation project is conducted according to the provisions of 30 CFR Subchapter R, IC 14–34–19, and applicable procurement provisions to ensure the timely progress and completion of the project; (3) develop specific site reclamation requirements, including, when appropriate, performance bonds that comply with procurement procedures; and (4) require the contractor conducting the reclamation to provide, before reclamation begins, applicable documents that authorize the extraction of coal and any payment of royalties.

We find that IC 14–34–19–15(e) is substantively identical to and no less

effective than the counterpart Federal regulation at 30 CFR 874.17(d).

f. IC 14–34–19–15(f) requires the contractor to obtain a surface coal mining and reclamation operations permit for any coal extracted beyond the limits of incidental coal determined under subdivision (c)(1).

We find that IC 14–34–19–15(f) is substantively identical to and no less effective than the counterpart Federal regulation at 30 CFR 874.17(e).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On June 10, 2004, under 30 CFR 732.17(h)(11)(i), 884.14(a)(2), 884.15(a), and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana program and plan (Administrative Record No. IND–1730). The U.S. Fish and Wildlife Service responded on July 12, 2004 (Administrative Record No. IND–1731), that it noted no significant issues related to wildlife conservation in the amendment.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On June 10, 2004, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. IND–1730). EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 10, 2004, we requested comments on Indiana's amendment (Administrative Record No. IND–1730), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Indiana sent to us on June 2, 2004. We are also taking this opportunity to correct the address listed at 30 CFR 914.10(a), which provides the location of the Indiana Department of Natural Resources' office where copies of the approved program are available for review.

To implement this decision, we are amending the Federal regulations at 30 CFR part 914, which codify decisions concerning the Indiana program and plan. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Sections 405 and 503(a) of SMCRA require that the State's plan and program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

With regard to the Indiana program, the Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

With regard to the Indiana plan, the Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and plan amendments because each program is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and plan amendments submitted by a State or Tribe are based solely on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR part 884 of the Federal regulations.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations and abandoned mine land reclamation programs. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA. Section 405(d) of SMCRA requires State abandoned mine land reclamation programs to be in compliance with the procedures, guidelines, and requirements established under SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The determination for the Indiana program is based on the fact that the Indiana program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands.

The determination for the Indiana plan is based on the fact that the Indiana plan does not provide for reclamation and restoration of land and water resources adversely affected by past coal mining on Indian lands. Therefore, the Indiana program and plan have no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866 and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

With regard to the Indiana program, this rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

With regard to the Indiana plan, this rule does not require an environmental impact statement because agency decisions on proposed State and Tribal abandoned mine land reclamation plans and plan amendments are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulations did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 26, 2004.

Charles E. Sandberg,

Regional Director, , Mid-Continent Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 914 is amended as set forth below:

PART 914—INDIANA

■ 1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 914.10 is amended by revising paragraph (a) to read as follows:

§ 914.10 State regulatory program approval.

* * * * *

(a) Indiana Department of Natural Resources, Division of Reclamation, R.R. 2, Box 129, Jasonville, IN 47438–9517.

* * * * *

■ 3. Section 914.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
June 2, 2004	September 14, 2004	IC 14–8–2–117.3; 14–34–6–7, 14–34–6–10(b)(2); 14–34–8–4(g) and (h), 14–34–8–6, 14–34–8–11(a), (b), (e), and (f); 2004–71–32.

■ 4. Section 914.25 is amended in the table in paragraph (a) by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 914.25 Approval of Indiana abandoned mine land reclamation plan amendments.

(a) * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * * *		
June 2, 2004	September 14, 2004	IC 14–34–19–15.

* * * * *

[FR Doc. 04–20664 Filed 9–13–04; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–054–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Maryland regulatory program (the Maryland Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Code of Maryland Regulations (COMAR) concerning valid existing rights (VER). The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: September 14, 2004

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (412) 937–2153. Internet: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION

I. Background on the Maryland Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Maryland program on December 1, 1980. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 1, 1980, **Federal Register** (45 FR 79431). You can also find later actions concerning Maryland's program and program amendments at 30 CFR 920.12, 920.15, and 920.16.

II. Submission of the Proposed Amendment

By letter dated May 4, 2004 (Administrative Record Number MD–583–11), Maryland sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment revises COMAR provisions concerning valid existing rights.

We announced receipt of the proposed amendment in the July 19, 2004, **Federal Register** (69 FR 42943). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 18, 2004. We received responses from one Federal Agency.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment. Any revisions we do not specifically discuss below concern nonsubstantive wording or editorial changes and are approved here without discussion.

[a] Revisions to Maryland's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

Maryland proposed revisions to the following rules containing language that is substantively identical to the corresponding sections of the Federal regulations.

State rule	Subject	Federal counterpart
26.20.10.01B.(7)(a) and (b)	Definition of Valid Existing Rights	30 CFR 761.5(a), (b)(1), (c) (Definition of Valid Existing Rights).
26.20.10.01–1	Demonstration	30 CFR 761.5(b)(2)
	Standards	(Definition of Valid Existing Rights).
26.20.10.02 and .02C	Prohibition	30 CFR 761.11, and 761.11(d)(1), (d)(2), (d)(2)(ii).
26.20.10.03A, B, C, D(2), and (H)	Determination of Limits and Prohibitions	30 CFR 761.11(d)(2)(i), 761.17(a), (b), (c) and (d)(1).
26.20.10.04	Exception for Existing Operations	30 CFR 761.12(a).
26.20.10.05A, B, B(1) through B(7), B(9), C, D, and E	Submission of Valid Existing Rights Determination.	30 CFR 761.16(b), (b)(1) through (b)(4).
26.20.10.06A through C, D, D(2) through D(8), D(10), E, and F.	Review of Valid Existing Rights Request	30 CFR 761.16(c) and (d).
26.20.10.07	Decision on Valid Existing Rights	30 CFR 761.16(e) and (f).

Because these proposed rules contain language that is substantively identical to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations and can be approved.

[b] Revisions to Maryland's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. COMAR 26.20.10.05B(8) is amended to provide as follows:

(8) Documentation that, if the coal interests have been severed from other property interests, that the owners of other property interests in the land to which the request pertains have been notified and provided an opportunity to comment on the validity of the property rights claimed in the request within 30 days of the notice.

The counterpart Federal provision at 30 CFR 761.16(b)(1)(viii) does not provide a specific time limit for the comment period on the validity of the property rights claimed. Rather, 30 CFR 761.16(b)(1)(viii) provides for "a reasonable opportunity" for the owners of other property interests in the land to which the request pertains to comment on the validity of the property rights claims. We find that Maryland's proposed 30-day comment period is reasonable and is, therefore, no less effective than the Federal regulations at 30 CFR 761.16(b)(1)(viii) and can be approved.

2. COMAR 26.20.10.06D is amended to provide that upon receipt of the Bureau notification that the request for a VER determination is complete, the requestor shall cause a notice to appear in a newspaper of general circulation in the county in which the land is located. The notice shall contain, at D.(1), "A heading of 'Notice of Request for Valid Existing Rights Determination.' " The Federal regulations at 30 CFR 761.16(d)(1) provide the requirement that a notice be published in a newspaper to inform the public of the submittal of a complete application for a VER determination and requesting public comment. The Federal regulations at 30 CFR 761.16(d)(1) also specify the minimum requirements of the notice. There is no Federal counterpart to the proposed Maryland provision at 26.20.10.06D(1). However, we find that proposed 26.20.10.06D(1) is not inconsistent with the Federal regulations at 30 CFR 761.16(d)(1) and can be approved.

3. COMAR 26.20.10.06D is amended to provide that upon receipt of the Bureau notification that the request for a VER determination is complete, the requestor shall cause a notice to appear in a newspaper of general circulation in the county in which the land is located. The notice shall contain, at D.(9), "[a] statement that interested persons may obtain a 30 day extension of the comment period upon written request to the bureau." The counterpart Federal provision at 30 CFR 761.16(d)(1)(vii) provides that the notice shall contain a statement that interested persons may obtain a 30-day extension of the comment period upon request. The Federal provision at 30 CFR 761.16(d)(1)(vii) does not provide that such a request be in writing. However, we find that Maryland's requirement that such requests be in writing is reasonable and does not render the Maryland program less effective than the Federal regulations at 30 CFR 761.16(d)(1)(vii) and can be approved.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Number MD–583–13). There were no comments.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Maryland program (Administrative Record Number MD–583–12). We received a response from one Federal agency, which is addressed below.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Maryland proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record Number MD–583–12). By letter dated July 29, 2004, EPA stated that it had reviewed the proposed amendment and had determined that there are no apparent inconsistencies with the Clean Water Act or other statutes under the jurisdiction of the EPA and had no comments on the amendment (Administrative Record Number MD–583–14).

V. OSM's Decision

Based on the above findings, we are approving the amendment that Maryland forwarded to us on May 4, 2004.

To implement this decision, we are amending the Federal regulations at 30 CFR part 920, which codify decisions concerning the Maryland program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that Maryland's program demonstrate that it has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of Maryland and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights regulations. The takings implications assessment for the Federal valid existing rights rule appears in Part XXIX.E of the preamble to that rule. See 64 FR 70766, 70822–27, December 17, 1999.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 20, 2004.

Brent Wahlquist,

Brent Wahlquist, Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 920 is amended as set forth below:

PART 920—MARYLAND

■ 1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et. seq.*

■ 2. Section 920.15 is amended by adding a new entry to the table in chronological order by "Date of final publication" to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
May 4, 2004	September 14, 2004	COMAR 26.20.10.01B(7)(a) and (b), 01–1, 02, 02C, 03A, B, C, D(2) and H, 04, 05, 06, and 07.

[FR Doc. 04–20663 Filed 9–13–04; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[Docket No. TX–053–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposed revisions to its regulations regarding annual permit fees. Texas intends to revise its program to improve operational efficiency.

EFFECTIVE DATE: September 14, 2004.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. E-mail: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the February 27, 1980, **Federal Register** (45 FR 12998). You can find later actions on the Texas program at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of the Amendment

By letter dated June 4, 2004 (Administrative Record No. TX–658), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment at its own initiative.

We announced receipt of the proposed amendment in the July 19, 2004, **Federal Register** (69 FR 42948). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 18, 2004. We did not receive any public comments.

During our review of the amendment, we identified a concern about the proposed annual fee. We notified Texas of the concern by letter dated July 26, 2004 (Administrative Record No. TX–658.03). By letter dated August 3, 2004 (Administrative Record No. TX–658.04), Texas sent us additional explanatory information to its proposed program amendment. Because the additional information merely clarified certain provisions of Texas' amendment, we did not reopen the public comment period.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

16 Texas Administrative Code (TAC) Section 12.108 Permit Fees

In paragraph (b), Texas proposed to increase the annual permit fee from $300.00 per acre to $390.00 per acre. Permittees must pay the fee to the Railroad Commission of Texas for each acre of land within the permit area on which the permittees actually conducted operations for the removal of coal and lignite during the calendar year. Because this increased fee has an effective date of September 1, 2004, Texas also proposed how it is to be calculated for calendar year 2004 only. For the period January 1, 2004, through August 31, 2004, the annual permit fee is $300.00 per acre and for the period September 1, 2004, through December 31, 2004, the fee is $390.00 per acre.

The Federal regulations at 30 CFR 777.17, concerning permit fees, provide that applications for surface coal mining permits must be accompanied by a fee determined by the regulatory authority. The Federal regulations also provide that the fees may be less than, but not more than the actual or anticipated cost of reviewing, administering, and enforcing the permit. In its letter dated August 3, 2004 (Administrative Record No. TX–658.04), Texas advised us that the proposed fee increase complies with the requirements of 30 CFR 777.17. We find that Texas' proposed annual permit fees are reasonable and consistent with the discretionary authority provided by the regulations at 30 CFR 777.17.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On June 10, 2004, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. TX–658.01). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on June 10, 2004, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. TX–658.01). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 10, 2004, we requested comments on Texas' amendment (Administrative Record No. TX–658.01), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Texas sent us on June 4, 2004.

To implement this decision, we are amending the Federal regulations at 30 CFR part 943, which codify decisions concerning the Texas program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. This determination is based on the fact that the Texas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Texas program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 26, 2004.

Charles E. Sandberg,

Regional Director, Mid-Continent Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 943 is amended as set forth below:

PART 943—TEXAS

■ 1. The authority citation for part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 943.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * * *		
June 4, 2004	September 14, 2004	16 TAC 12.108(b).

[FR Doc. 04–20662 Filed 9–13–04; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA85

TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2003 (NDAA–03)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final addresses eliminating the requirement for TRICARE preauthorization of inpatient mental health care for TRICARE/Medicare eligible beneficiaries where Medicare is primary payer and has already authorized the care; approving a physician or other health care practitioner who is eligible to receive reimbursement for services provided under Medicare as a TRICARE provider if the provider is also a TRICARE authorized provider; and, expanding the TRICARE Dental Program (TDP) eligibility for dependents of deceased members.

DATES: This rule is effective September 14, 2004 except that the effective date for the amendment to 32 CFR 199.4(a)(12)(ii)(E)(*2*) is October 1, 2004, and the effective date for the amendment to 32 CFR 199.13(c)(13)(ii)(E)(*2*) is December 2, 2002. The applicability date for the amendment to 32 CFR 199.6(c)(2)(v) is for any TRICARE contract entered into on or after December 2, 2002.

FOR FURTHER INFORMATION CONTACT: Ann N. Fazzini, (303) 676–3803 (The sections of this rule regarding elimination of mental health preauthorization and Medicare providers as TRICARE providers) or Major Shannon Lynch, (303) 676–3496 (The section of this rule regarding the TRICARE Dental Program). Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 19, 2003, (68 FR 65172), the Office of the Secretary of Defense published for public comment an interim final rule regarding the following three changes found in the the Bob Stump NDAA 03 (Pub. L. 107–314). We received no public comments.

I. Elimination of Mental Health Pre-Authorization

Section 701 of the Bob Stump NDAA–03 states that:

> (B) Preadmission authorization for inpatient mental health services is not required under subparagraph (A) in the following cases:
>
> (i) In the case of an emergency.
>
> (ii) In a case in which any benefits are payable for such services under Part A of title XVIII of the Social Security act (42 U.S.C. 1395c *et seq.*) subject ot subparagraph (C).
>
> (C) In a case of inpatient mental health services to which subparagraph (B)(ii) applies, the Secretary shall require advance authorization for a continuation of the provision of such benefits after benefits cease to be payable for such services under such part A.

This language eliminates the preauthorization requirement for inpatient mental health care where Medicare is primary payer. Currently, in situations where a Medicare beneficiary, who is also TRICARE eligible, receives inpatient mental health care, TRICARE applies its rules for preauthorization even though TRICARE is not the primary payer. The language found in Section 701 of the Bob Stump NDAA–03 changes the way we currently operate. Once this change is implemented, Medicare beneficiaries who are also TRICARE eligible, will follow Medicare's rules until their Medicare benefit is exhausted. Once the Medicare benefit is exhausted, TRICARE's rules regarding preauthorization will apply.

Section 701 of the Bob Stump NDAA–03 also continues our current policy that pre-authorization is not required in the case of an emergency.

II. Medicare Provider Certification Applicable to TRICARE Individual Professional Providers

Section 705 of the Bob Stump NDAA–03 states that:

> Subject to subsection (a), a physician or other health care practitioner who is eligible to receive reimbursement for services provided under Medicare (as defined in section 1086(d)(3)(C) of this title) shall be considered approved to provide medical care authorized under this section and section 1086 of this title unless the administering Secretaries have information indicating Medicare, TRICARE, or other Federal health care program integrity violations by the physician or other health care practitioner.

This language provides that a physician or other health care practitioner who is eligible to receive reimbursement for services provided under Medicare (as defined in section 1086(d)(3)(C) of title U.S.C., chapter 55) shall be considered approved to provide medical care authorized under section 1079 and section 1086 of title 10, U.S.C., chapter 55 unless the administering Secretaries have information indicating Medicare, TRICARE, or other Federal health care program integrity violations by the physician or other health care practitioner. Approval is limited to those providers who are currently considered TRICARE authorized providers as outlined in 32 CFR 199.6. Services and supplies rendered by those providers not currently considered authorized providers shall be denied.

Our contractors are currently in compliance with this provision, but this final rule is necessary to add the statutory language to our regulation.

Section 705 continues the current TRICARE policy of excluding providers who are sanctioned or who have program integrity violations under

Medicare, TRICARE, or other Federal health programs. Such providers are presently specifically excluded as TRICARE providers.

III. TRICARE Dental Program

Section 703 of the Bob Stump NDAA 03 revises eligibility by stating:

> If, on the date of the death of the member, the dependent is enrolled in a dental benefits plan established under subsection (a) or is not enrolled in such a plan by reason of a discontinuance of a former enrollment under subsection (f).

Currently, eligibility in the TDP includes any such dependent of a member who died while on active duty for a period of 31 days or more or a member of the Ready Reserve (*i.e.*, Selected Reserve and Individual Ready Reserve) if the dependent was enrolled on the date of the death of the member. The exception to this is that the term does not include the dependent after the end of the three-year period beginning on the date of the member's death. This 3-year period of continued enrollment also applies to dependents of active duty members who died on or between the dates of 1 February 2000 and 31 January 2001 while the dependents were enrolled in the TRICARE Family Member Dental Program (TFMDP). Section 703 of the NDAA FY03 TRICARE changes eligibility in the TDP by including any such dependent of a member who dies while on active duty for a period of 31 days or more or a member of the Ready Reserve if, on the date of the death of the member, the dependent is enrolled in a dental benefits plan or is not enrolled in such a plan by reason of a discontinuance of a former enrollment due to transfer to a duty station where dental care is provided to the member's eligible dependents under a program other than that plan. The exception remains that the term does not include the dependent after the end of the three-year period beginning on the date of the member's death.

IV. Regulatory Procedures

Section 801 of title 5, United States Code, and Executive Order 12866 require certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a major rule under 5 U.S.C. 801. It is a significant regulatory action but not economically significant, and has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866. In addition, we certify that this proposed rule will not significantly affect a substantial number of small entities.

Paperwork Reduction Act

This rule, as written, imposes no burden as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). If, however, any program implemented under this rule causes such a burden to be imposed, approval thereof will be sought from the Office of Management and Budget in accordance with the Act, prior to implementation.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

■ Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.4 is amended by revising paragraphs (a)(12)(ii)(A) and (a)(12)(ii)(E) and the first sentence in paragraph (b)(6)(iii)(A) to read as follows:

§ 199.4 Basic program benefits

(a) * * *

(12) * * *

(ii) * * *

(A) This section generally requires preadmission authorization for all non-emergency inpatient mental health services and prompt continued stay authorization after emergency admissions with the exception noted in paragraph (a)(12)(ii) of this section. It also requires preadmission authorization for all admissions to a partial hospitalization program, without exception, as the concept of an emergency admission does not pertain to a partial hospitalization level of care. Institutional services for which payment would otherwise be authorized, but which were provided without compliance with preadmission authorization requirements, do not qualify for the same payment that would be provided if the preadmission requirements had been met.

* * * * *

(E) Preadmission authorization for inpatient mental health services is not required in the following cases:

(*1*) In the case of an emergency.

(*2*) In a case in which benefits are payable for such services under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c *et seq.*) subject to paragraph (a)(12)(iii) of this section.

(*3*) In a case of inpatient mental health services in which paragraph (a)(12)(ii) of this section applies, the Secretary shall require advance authorization for a continuation of the provision of such services after benefits cease to be payable for such services under such part A.

* * * * *

(b) * * *

(6) * * *

(iii) * * *

(A) With the exception noted in paragraph (a)(12)(ii)(E) of this section, all non-emergency admissions to an acute inpatient hospital level of care must be authorized prior to the admission. * * *

* * * * *

■ 3. Section 199.6 is amended by revising paragraph (c)(2)(v) to read as follows:

§ 199.6 Authorized providers

* * * * *

(c) * * *

(2) * * *

(v) Subject to section 1079(a) of title 10, U.S.C., chapter 55, a physician or other health care practitioner who is eligible to receive reimbursement for services provided under Medicare (as defined in section 1086(d)(3)(C) of title 10 U.S.C., chapter 55) shall be considered approved to provide medical care authorized under section 1079 and section 1086 of title 10, U.S.C., chapter 55 unless the administering Secretaries have information indicating Medicare, TRICARE, or other Federal health care program integrity violations by the physician or other health care practitioner. Approval is limited to those classes of provider currently considered TRICARE authorized providers as outlined in 32 CFR 199.6. Services and supplies rendered by those providers who are not currently considered authorized providers shall be denied.

* * * * *

■ 4. Section 199.13 is amended by revising paragraph (c)(3)(ii)(E)(*2*) to read as follows:

§ 199.13 TRICARE Dental Program.

(c) * * *

(3) * * *

(ii) * * *

(E) * * *

(2) Continuation of eligibility for dependents of service members who die while on active duty or while a member of the Ready Reserve (*i.e.*, Selected Reserve or Individual Ready Reserve). Eligible dependents of active duty members while on active duty for a period of thirty-one (31) days or more and eligible dependents of Ready Reserve (*i.e.*, Selected Reserve or Individual Ready Reserve members), as specified in 10 U.S.C. 10143 and 10144(b) respectively, if on the date of the death of the member, the dependent is enrolled in the TDP, or if not enrolled by reason of a discontinuance of a former enrollment under paragraphs (c)(4)(ii) and (c)(4)(iii) of this section shall be eligible for continued enrollment in the TDP for up to three (3) years from the date of the member's death. This 3-year period of continued enrollment also applies to dependents of active duty members who died within the year prior to the beginning of the TDP while the dependents were enrolled in the TFMDP. This continued enrollment is not contingent on the Selected Reserve or Individual Ready Reserve member's own enrollment in the TDP. During the three-year period of continuous enrollment, the government will pay both the Government and the beneficiary's portion of the premium share.

* * * * *

Dated: September 2, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–20366 Filed 9–13–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 031125290–4058–02; I.D. 090304A]

RIN 0648–AQ97

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Reallocation of Pacific Sardine

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reallocation of Pacific sardine.

SUMMARY: NMFS announces the reallocation of the remaining Pacific sardine harvest guideline in the exclusive economic zone off the Pacific coast. On September 1, 2004, 68,009 metric tons (mt) of the 122,747–mt harvest guideline were estimated to remain unharvested. The Coastal Pelagics Species Fishery Management Plan (FMP) requires that a review of the fishery be conducted and any uncaught portion of the harvest guideline remaining unharvested in Subarea A (north of Pt. Arena, CA) and Subarea B (south of Pt. Arena, CA) be added together and reallocated, with 20 percent allocated to Subarea A and 80 percent to Subarea B; therefore, 13,602 mt is allocated to Subarea A and 54,407 mt is allocated to Subarea B. The intended effect of this action is to ensure that a sufficient amount of the resource is available to all harvesters on the Pacific coast and to achieve optimum yield.

DATES: Effective September 8, 2004, through December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Tonya L. Wick, Southwest Region, NMFS, 562–980–4036.

SUPPLEMENTARY INFORMATION: On February 25, 2004, NMFS published notice of a harvest guideline of 122,747 mt for Pacific sardine in the **Federal Register** (69 FR 8572) for the fishing season January 1, 2004, through December 31, 2004. The harvest guideline was allocated as specified in the FMP, that is, one-third (40,916 mt) for Subarea A, which is north of 39°00′00″ N. lat. (Pt. Arena, CA) to the Canadian border; and two-thirds (81,831 mt)for Subarea B, which is south of 39°00′00″ N. lat. to the Mexican border.

On August 26, 2003, a regulatory amendment to the FMP developed by the Pacific Fishery Management Council (Council) was approved, and a final rule implementing the amendment was published in the **Federal Register** on September 5, 2003 (68 FR 52523). The amendment: (1) changed the definition of Subarea A and Subarea B by moving the geographic boundary between the two areas from Pt. Piedras Blancas at 35°40′00″ N. lat. to Pt. Arena at 39°00′′00″ N. lat.; (2) changed the date when Pacific sardine that remain unharvested are reallocated to Subarea A and Subarea B from October 1 to September 1; (3) changed the percentage of the unharvested sardine that is reallocated to Subarea A and Subarea B from 50 percent to both subareas to 20 percent to Subarea A and 80 percent to Subarea B; and (4) reallocated all unharvested sardine that remain on December 1 coast wide.

Landings in the Pacific Northwest in 2004 have been above the landings for the same period during the 2003 fishing season. Landings by September 1 in Subarea A north of Pt. Arena were estimated at 30,919 mt; therefore, 9,997 mt of the initial allocation to Subarea A of 40,916 mt remained unharvested. Landings in California have been below landings for the same period in 2003. Landings by September 1 in Subarea B south of Pt. Arena were estimated at 23,819 mt; therefore, 58,012 mt of the initial allocation to Subarea B of 81,831 remained unharvested. Based on this information, a total of 68,009 mt of the 122,747–mt harvest guideline remained unharvested on September 1, 2004. Therefore, according to the requirements of the FMP, as amended, 20 percent of 68,009 mt (13,602 mt) is allocated to Subarea A, and 80 percent of 68,009 mt (54,407 mt) is allocated to Subarea B.

Any portion of 122,747 mt harvest guideline that remains unharvested in Subarea A and Subarea B on December 1, 2004, will be available for harvest coast-wide until the 122,747–mt harvest guideline is reached and the fishery is closed.

Classification

This action is authorized by the FMP in accordance with 50 CFR 660.517 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds for good cause under 5 U.S.C. 553(b)(B) that providing prior notice and an opportunity for public comment on this action is unnecessary because redistribution of the harvest guideline is a ministerial act required by the FMP to ensure that all harvesters have access to the resource. This action relieves potential restrictions on those affected by Federal regulations, and affording additional notice and comment would impede the agency's ability to manage Pacific sardine. Accordingly, providing prior notice and an opportunity for public comment would serve no useful purpose.

Because this rule merely provides a redistribution of a harvest guideline to meet the requirements of the FMP and does not require any participants in the fishery to take action or to come into compliance, the AA finds for good cause under 5 U.S.C. 553(d)(3) that delaying the effective date of this rule for 30 days is unnecessary.

Because prior notice and opportunity for public comment are not required for this action by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 7, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–20615 Filed 9–8–04; 3:56 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 090804A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2004 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 10, 2004, until 2400 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA is 24,404 metric tons (mt) as established by the 2004 harvest specifications for groundfish of the GOA (69 FR 9261, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 24,000 mt, and is setting aside the remaining 404 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the directed fishery for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 8, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–20692 Filed 9–9–04; 3:06 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 177
Tuesday, September 14, 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.

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC23

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investments in Farmers' Notes

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, agency, us, or we) adopts a proposed rule that amends regulations governing investments in farmers' notes (Farmers' Notes). As a result, it should be easier for Farm Credit System (FCS, Farm Credit, or System) institutions and non-System lenders to work together to finance farmers, ranchers, and aquatic producers or harvesters (farmers). The proposed rule would remove unnecessary regulatory restrictions on Farmers' Notes so this investment program will be able to keep pace with rapid changes in agricultural credit markets. Credit enhancements and a new concentration limit will strengthen the safety and soundness of the Farmers' Notes. The FCA also proposes amendments to its capital regulations.

DATES: You may send us comments by October 14, 2004.

ADDRESSES: Send us your comments by electronic mail to *reg-comm@fca.gov*, through the Pending Regulations section of our Web site at *http://www.fca.gov*, or through the government-wide Web site *http://www.regulations.gov*. You may also submit your comments in writing (in triplicate) to S. Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, or by facsimile transmission to (703) 734–5785. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Dennis K. Carpenter, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434.

or

Richard A. Katz, Senior Attorney, Office of the General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The purpose of this proposed rule is to: (1) Make affordable credit more available to farmers; (2) enable associations to provide additional funding and liquidity to non-System lenders; and (3) increase cooperation between System and non-System financial institutions and merchants that extend credit to agriculture (non-System agricultural lenders). Although there are several different ways for System and non-System agricultural lenders to work together in extending credit to farmers, ranchers, cooperatives, and other eligible rural residents, this proposed rule focuses on investments in Farmers' Notes.

II. Overview of the Farmers' Notes Program

The Farmers' Notes program has existed since 1966, when the FCA originally approved it. Under this program, certain FCS direct lender associations invest in notes, contracts, and other obligations that eligible farmers enter into with non-System agricultural lenders. Currently, § 615.5172 authorizes production credit associations (PCAs) and agricultural credit associations (ACAs) to buy Farmers' Notes from private dealers and cooperatives that sell farm machinery, supplies, equipment, home appliances, and other items of a capital nature to eligible farmers and ranchers. As a result, the Farmers' Notes program provides liquidity to certain non-System lenders that extend credit to agriculture.

The authority to purchase Farmers' Notes derives from sections 2.2(10) and 2.12(18) of the Farm Credit Act of 1971, as amended (Act), which permit direct lender associations to invest their funds as may be approved by their funding bank under FCA regulations. Similar to other investments, the regulation places a portfolio cap and a concentration limit on association investments in Farmers' Notes. Currently, § 615.5172(c) limits investments in Farmers' Notes to 15 percent of each association's total outstanding loans at the end of its preceding fiscal year. Additionally, investments in Farmers' Notes sold by a single creditor cannot exceed 50 percent of the association's capital and surplus. Under current § 615.5172(d), participating dealers and cooperatives must endorse Farmers' Notes that they sell to associations with full recourse. The full recourse requirement is designed as a credit enhancement, which is consistent with the treatment of Farmers' Notes as investments. Finally, the current regulation requires associations to contact those notemakers who meet their credit standards, and encourage them to become FCS borrowers.

III. Rulemaking on Farmers' Notes

A. Historical Background

This proposed rule is the latest phase of a rulemaking that began 4 years ago. On April 20, 2000, the FCA published an advance notice of proposed rulemaking (ANPRM) that asked the public questions about ways to improve the funding and discount relationship between Farm Credit banks and other financing institutions (OFIs).[1] The commenters responded with a broad array of suggestions on various ways that System and non-System agricultural lenders could cooperate to extend credit to agriculture and rural America. As a result, the FCA decided to hold a public meeting on OFIs and other alternatives for FCS lenders to provide funding to non-System agricultural lenders. The **Federal Register** notice that announced the public meeting asked interested parties for input on both OFIs and "other types of partnering relationships between System and non-System lending institutions that would increase the availability of funds to agriculture and rural America."[2]

On August 3, 2001, we held a public meeting in Des Moines, Iowa, where interested parties offered suggestions on how we could facilitate greater cooperation between System and non-System agricultural lenders. Many System and non-System commenters

[1] *See* 65 FR 21151 (April 20, 2000).

[2] *See* 66 FR 35428 (July 5, 2001).

encouraged us to promote other arrangements, in addition to the OFI program, that make it easier for Farm Credit banks and associations to provide funding and liquidity to non-System agricultural lenders. Many commenters expressed their desire for more flexible and informal arrangements between FCS and non-System agricultural lenders.

B. Original Proposed Rule

On August 11, 2003, the FCA adopted a proposed rule (original proposed rule or proposed rule of August 11, 2003) on OFIs and Farmers' Notes that incorporated many of the comments and suggestions that we received from the ANPRM and at the public meeting.[3] The FCA proposed four major changes to the Farmers' Notes regulation so that this program would be more responsive to the needs of other creditors and their customers. First, the original proposed rule would have expanded this program to all entities that routinely extend agricultural or aquatic credit to eligible farmers and ranchers in the normal course of their business. Whereas this program now is restricted to private dealers and cooperatives, the proposed rule of August 11, 2003, would have allowed all types of creditors, including financial institutions and merchants, to sell Farmers' Notes to FCS associations. Second, the original proposed rule would have expanded this program to long-term loans. Third, the proposed rule of August 11, 2003, would have permitted all FCS direct lenders to invest in Farmers' Notes, whereas this program is now limited to PCAs and ACAs, which have short- and intermediate-term lending authorities. Fourth, the original proposed rule would have allowed FCS associations to invest in notes from aquatic producers or harvesters and farm-related businesses.

Other provisions of the original proposed rule would have ensured that FCS direct lender associations continue to treat Farmers' Notes as investments. Under § 615.5172(b) of the proposed rule of August 11, 2003, for example, FCS associations could have invested in Farmers' Notes that are secured by specified collateral that the underlying debtor pledges to creditors. The original proposed rule would have retained the 15-percent portfolio cap and the 50-percent concentration limit in § 615.5172(c). Current § 615.5172(d) requires the seller to endorse all Farmers' Notes with full recourse. The FCA proposed on August 11, 2003, to update this requirement by allowing other types of credit enhancements, such as guarantees, insurance, reserves of cash or marketable securities, subordinated interests, or a combination of such credit enhancements that would adequately cover the principal amount of the association's investment in Farmers' Notes.

The proposed rule of August 11, 2003, would have deleted the provision in § 615.5172 that currently requires associations to contact the farmers or ranchers who are indebted on these Farmers' Notes and encourage them to become FCS borrowers.

C. Comment Letters

The FCA received a total of 111 comments on the proposed rule on OFIs and Farmers' Notes, of which 105 comment letters specifically addressed issues related to Farmers' Notes. Comments on Farmers' Notes came from the Farm Credit Council, two Farm Credit banks, two Farm Credit associations, an agricultural credit cooperative OFI, the Independent Community Bankers of America (ICBA), which is the trade association for community banks, and 98 affiliated commercial banks and their state banking trade associations. System commenters supported the proposed rule while all non-System commenters opposed it.

All commercial bank commenters asked the FCA to withdraw the original proposal on Farmers' Notes. These commenters suggested that the FCA hold a public meeting and solicit congressional input on Farmers' Notes if the agency continues to believe that FCS associations need an expanded Farmers' Notes program. The ICBA and other commercial bank commenters stated that the proposed rule would "reinvent an unused lending program" as "an expansive new consumer and business lending program that has not been authorized by Congress."

Commercial bank commenters also raised safety and soundness concerns about the Farmers' Notes program. The agricultural credit cooperative OFI told the FCA that the proposed revisions to § 615.5172 would not attract non-System agricultural lenders to the Farmers' Notes program or benefit their customers.

System commenters believed that the proposed revisions to the Farmers' Notes regulation will strengthen cooperation between System and non-System lenders and increase the flow of credit to agriculture. Two System commenters, however, asked the FCA to revise the proposed regulation so it would not require that collateral "of a capital nature" secure all Farmers' Notes. One of these commenters suggested that the final rule should not require that collateral secure all Farmers' Notes. This commenter advised the FCA that the final rule should treat collateralization of Farmers' Notes as a credit enhancement.

D. The Supplemental Proposed Rule

On April 22, 2004, the FCA Board approved a final rule on OFIs. The preamble informed the public that the FCA was not adopting a final rule on Farmers' Notes because it was still considering the best regulatory approach to this program.[4]

The FCA declines the request of commercial bank commenters to hold another public meeting on this issue. This rulemaking has progressed beyond the point where another public meeting will help the FCA to bring this rulemaking to a successful conclusion. Earlier phases of this rulemaking, such as the ANPRM, the public meeting in Des Moines and the proposed rule have already provided the FCA with the type of basic information that another public meeting will provide. Instead, input from the public on a specific regulatory proposal is the best way to develop a final rule that will improve the flow of funds to agriculture and encourage greater cooperation between the FCS and non-System agricultural lenders.

The FCA also declines the request of commercial bank commenters to consult with Congress about revisions to the Farmers' Note regulation. As discussed below, the FCA has express authority delegated by Congress under sections 2.2(10), 2.12(18), 5.17(a)(9), 7.6(c), and 7.8(b) of the Act to enact investment regulations for FCS associations. In addition, FCA submits all proposed rules to Congress for a 30-day review period under section 5.17 of the Act. FCA welcomes comments from Members of Congress as it does from all members of the public.

E. New Proposed Rule on Farmers' Notes

The new proposed rule on Farmers' Notes responds to issues and concerns raised by both System and non-System commenters. The FCA proposes to retain the provisions in § 615.5172(a) of the original proposed rule that would: (1) Expand the Farmers' Notes program to all non-System agricultural lenders; (2) allow all FCS direct lender associations to invest in Farmers' Notes; (3) extend this program to long-term mortgages; and (4) include credits to aquatic producers or harvesters, and farm-related businesses in this program. The FCA also proposes, without change,

[3] *See* 68 FR 47502 (Aug. 11, 2003).

[4] *See* 69 FR 29852 (May 26, 2004).

§ 615.5172(d), which would authorize other credit enhancements for Farmers' Notes, such as guarantees, insurance, reserves, and subordinated interests. The FCA proposes again to repeal the provision in current § 615.5172(d) that requires associations to contact the farmers or ranchers who are indebted on Farmers' Notes, and encourage them to become FCS borrowers. The new proposal addresses the commenters' concerns by: (1) Limiting investments in Farmers' Notes that are not backed by agricultural credits; (2) lowering the concentration limit for Farmers' Notes; and (3) not requiring collateral of a "capital nature" for Farmers' Notes. As we explain the new proposal in greater detail, we will respond to issues raised by various commenters.

Commercial bank commenters assert that the Farmers' Notes program is really a lending program that is disguised as an investment program. The FCA responds that it has authorized the Farmers' Notes program by exercising its delegated powers under sections 2.2(10), 2.12(18), 5.17(a)(9), 7.6(c), and 7.8(b) of the Act to regulate investments at FCS associations. FCA regulations authorize FCS institutions to hold investments for two fundamental, but distinct, purposes. The regulations in subpart E of part 615 authorize FCS institutions to hold investments for maintaining liquidity and managing market risks.

Separately, the regulations in subpart F of part 615 permit FCS banks and associations to hold investments that advance their public policy mission of financing agriculture. Farmers' Notes are agricultural investments. The Farmers' Notes program enables FCS associations to act as a source of liquidity for non-System agricultural lenders, including small local entities, that sell agricultural supplies, equipment, machinery, other capital goods, and household appliances to farmers and ranchers on credit. Thus, this program benefits farmers, ranchers, and their suppliers.

Under both the existing and proposed regulations, Farmers' Notes are subject to many regulatory criteria that apply to investments. For example, the regulation requires full recourse or other credit enhancements that upgrade the credit quality and reduce the risk of these assets. Additionally, § 615.5172 imposes a portfolio cap on Farmers' Notes, which the Act and FCA lending regulations do not establish for agricultural or aquatic loans. Another distinction between Farmers' Notes and loans is that FCS associations discount Farmers' Notes from other creditors, rather than lending directly to eligible farmers and ranchers. When all of these factors are taken together, it is clear that Farmers' Notes is an investment, not a lending, program.

Comment letters from commercial banks and their trade associations state that the original proposed rule would reinvent the Farmers' Notes program as an "expansive new consumer and business lending program" that would finance "a vast array of retail merchants" who sell non-agricultural consumer products on credit to rural residents who are not farmers. This has never been the intent of the FCA, and the scope of this regulation does not shift the focus of the Farmers' Notes program away from farmers and agriculture. For example, FCS associations are authorized to invest only in notes from farmers, ranchers, aquatic producers or harvesters, and farm-related businesses that are eligible to borrow from the System. Additionally, the Farmers' Notes program focuses on agricultural, not consumer, credit. Therefore, FCS associations primarily will invest in Farmers' Notes that finance: (1) Agricultural or aquatic operations of farmers, ranchers, aquatic producers or harvesters, or (2) farm-related businesses.

The FCA proposes two major changes to § 615.5172 that should dispel any confusion about the scope of the Farmers' Notes program. First, the FCA proposes to revise § 615.5172(a) to more clearly identify which creditors may sell Farmers' Notes to FCS associations. Second, proposed § 615.5172(b) limits investments in Farmers' Notes that are for consumer goods and services.

Under the proposed rule of August 11, 2003, § 615.5172(a) would have allowed FCS associations to invest in Farmers' Notes given "to entities that routinely extend credit in the normal course of their business." We now propose that § 615.5172(a) require the seller of Farmers' Notes to be either: (1) A financial institution, or (2) an entity whose primary business is selling agricultural supplies, machinery, and equipment to eligible farmers and farm-related businesses, and extends agricultural or aquatic credit to such customers in the normal course of its business. This revision should remove any doubt that the Farmers' Notes program remains geared towards agricultural credit. The primary business of financial institutions is to extend credit. In contrast, merchants primarily sell goods and services, while providing credit to their customers as a supplemental but integral part of their overall business. The proposed rule does not authorize FCS associations to provide funding and liquidity to businesses that primarily sell consumer goods and services to the general public. The FCA has also added a new provision to § 615.5172(b) that expressly restricts consumer credit.

Proposed § 615.5172(a) and (b)(2) reinforce each other and prevent the Farmers' Notes program from expanding into a general consumer financing program. Proposed § 615.5172(a) authorizes FCS associations to buy Farmers' Notes only from financial institutions and entities whose primary business is selling agricultural supplies, equipment, or machinery to farmers, ranchers, or aquatic producers or harvesters while debt on consumer goods and services from general retail businesses cannot qualify as Farmers' Notes under § 615.5172(b)(2). As a result, no FCS association could invest in notes from merchants whose primary business is selling consumer goods and services to people who are not eligible farmers, ranchers, or aquatic producers or harvesters. However, an association could buy notes that are secured by home appliances and furniture from a farm supply cooperative that sells such consumer goods to its farmer-members.

In addition to these two regulatory revisions, another provision of § 615.5172 ensures that FCS associations invest only in Farmers' Notes to eligible farmers, ranchers, aquatic producers or harvesters, and farm-related businesses. The new proposed regulation continues to require that an FCS association invest in Farmers' Notes only in accordance with policies prescribed by its own board and the board of its funding bank. Thus, each association must operate under policies that ensure it invests only in notes to eligible agricultural and aquatic producers or harvesters, and farm-related businesses. Failure to comply with such policies would violate the regulation.

As requested by two System associations, the FCA has revised § 615.5172(b) so that it no longer requires collateral "of a capital nature" to secure Farmers' Notes for agricultural, aquatic, or farm-related purposes. However, these notes must still be secured by some form of collateral as is appropriate for the type of funding being provided. Instead of limiting the collateral to items "of a capital nature," the new proposal gives FCS associations the flexibility to accept other agricultural collateral such as accounts receivable or inventory, as appropriate.

The FCA declines a System commenter's request to give FCS associations the option of investing in

unsecured Farmers' Notes. This commenter does not believe that the rule should require collateral to secure all Farmers' Notes. Instead, the commenter wants associations to have the option of requiring collateral as a credit enhancement. The FCA responds that securing Farmers' Notes with collateral enhances the safety and soundness of the Farmers' Notes program. From a legal perspective, secured credit is easier to collect if either the seller of these Farmers' Notes fails, or the underlying notemaker defaults. Together, both collateral and credit enhancements improve the quality and liquidity of Farmers' Notes, so they qualify as investments under the regulations.

Commercial bank commenters suggested that the 15-percent portfolio cap and the 50-percent concentration limit in § 615.5172(c) are inherently unsafe and unsound. According to these commenters, Farmers' Notes will not diversify the portfolios of FCS associations, which are already concentrated in agricultural assets. Another criticism of commercial banks is that Farmers' Notes are not liquid assets.

In response, the FCA reiterates that FCA regulations authorize FCS institutions to hold investments for two different purposes. As discussed earlier, FCS institutions hold investments to: (1) Maintain liquidity and manage market risks, or (2) advance their public policy mission of financing agriculture. Farmers' Notes are investments in agriculture. Investing in Farmers' Notes enables FCS associations to provide funding and liquidity to non-System agricultural lenders. Farmers' Notes also increase the flow of affordable, dependable, and stable credit to America's farmers and ranchers, and it fosters cooperation between the FCS and non-System agricultural lenders. In this context, this program achieves the objectives that Congress identified in section 1.1 of the Act.

As agricultural lenders, FCS associations have the expertise that is necessary to understand and manage the risks inherent in Farmers' Notes. Additionally, the regulation upgrades the quality of these assets and minimizes the risks to associations by: (1) Requiring collateral and credit enhancements on all Farmers' Notes, and (2) establishing a portfolio cap and concentration limit on these investments. Thus, this program does not expose FCS associations to significant risks that they cannot manage.

Since 1972, FCA regulations have imposed a 15-percent portfolio cap and a 50-percent concentration limit on Farmers' Notes. We continue to believe that the 15-percent portfolio cap on Farmers' Notes is appropriate because FCS associations are cooperatives, and loans to their members should always comprise most of the assets in their portfolios. However, the suggestion that we should consider a lower concentration limit on Farmers' Notes has merit. We anticipate that a revised rule will increase investments in Farmers' Notes which, in turn, could expose System associations to greater safety and soundness risk issues from the counterparties in these transactions. For this reason, proposed § 615.5172(c) limits the total amount of Farmers' Notes that an association may invest in from any single seller, guarantor, insurer, or other counterparty to 20 percent of the association's total capital. Although the current regulation and original proposed rule refer to "capital and surplus," the new proposal ties the concentration limit to "total capital," which is consistent with FCA's capital regulations. This limit is compatible with the concentration limits for other investments, and it adequately addresses counterparty risks associated with these investments.

As noted earlier, the agricultural credit cooperative OFI stated that the Farmers' Notes regulation offers no incentives for non-System agricultural lenders. More specifically, this commenter asserted that full recourse and other credit enhancements frustrate the efforts of non-System agricultural lenders to minimize their capital, credit, and portfolio risks by selling notes to FCS associations. If non-System agricultural lenders do not take part in this program, the commenter reasoned that farmers and ranchers would not benefit from it. Although reducing capital, credit, and portfolio limits are important objectives for many agricultural lenders, the Farmers' Notes program bolsters the liquidity and provides an additional source of funds to agricultural businesses and other non-System agricultural lenders.

Commercial bank commenters claimed that § 615.5172, as originally proposed, fails to adhere to statutory restrictions that apply to cross-title lending. The FCA replies that investments are not subject to the same restrictions that apply to loans. Separately, almost all FCS associations are now ACAs, which have authority to make both short- and intermediate-term operating loans, and long-term mortgage loans. No free-standing PCAs are left in the System. There are only 12 stand alone Federal land credit associations (FLCAs) in the FCS, and all are relatively small. The FCA anticipates that many of these FLCAs will merge into ACAs in the near future. For these reasons, we do not believe that the cross-title concerns presented by the commenters are a serious issue.

IV. Capital Risk Weighting

The preamble to the proposed rule of August 11, 2003, explained that we have interpreted FCA's capital adequacy regulations as requiring Farm Credit banks to risk weight investments in Farmers' Notes at 100 percent. The original proposed rule would have amended § 615.5210 so that FCS associations could risk weight Farmers' Notes that exhibit specified risk-mitigating characteristics at 20 or 50 percent. Under the proposed rule of August 11, 2003, System associations would continue to risk weight Farmers' Notes that do not meet these criteria, or otherwise exhibit a higher risk profile at 100 percent. We received no comments about the risk weighting of Farmers' Notes. We now propose the risk-weighting guidelines for Farmers' Notes, as addressed in the original proposed rule, without change.

The proposed rule would establish a 20-percent risk weighting for Farmers' Notes sold by entities that are either: (1) An equivalent to an Organization for Economic Cooperation and Development (OECD)[5] bank (Federal-or state-regulated depository institution); (2) subsidiaries of OECD equivalent banks or bank holding companies and carry full guarantees from such parent entities; or (3) an institution that carries one of the three highest investment-grade ratings from a nationally recognized statistical rating organization (NRSRO).[6] Additional criteria for a 20-percent risk weight is that the obligation must have full recourse or another credit enhancement.

Proposed § 615.5210 would establish a 50-percent risk weight for Farmers' Notes sold by entities that: (1) Are not OECD banks but otherwise meet similar

[5] "OECD" means the group of countries that are full members of the Organization for Economic Cooperation and Development, regardless of entry date, as well as countries that have concluded special lending arrangements with the International Monetary Fund's General Arrangement to Borrow, excluding any country that has rescheduled its external sovereign debt within the previous 5 years. For purposes of United States banking operations, all federally regulated depository institutions are considered the equivalent of OECD banks.

[6] "Nationally recognized statistical rating organization" means an entity recognized by the Division of Market Regulation (or any successor Division) of the Securities and Exchange Commission (Commission) as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers.

capital and operational standards; and (2) carry an investment-grade or higher NRSRO rating, or the investment is guaranteed by a parent company that has such a rating. Again, full recourse or another appropriate credit enhancement is a condition for the 50-percent risk weight.

The proposed rule retains a 100-percent risk weight for all Farmers' Notes that do not qualify for the 20-percent or 50-percent risk-weight categories. Sellers of Farmers' Notes that are well capitalized and well managed expose the System to less risk. Therefore, FCS institutions need less capital to support these investments. This approach is consistent with the direction from the proposed Basel Accord revisions, which are currently under consideration.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615, chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart F—Property, Transfers of Capital, and Other Investments

2. Revise § 615.5172 to read as follows:

§ 615.5172 Investments by associations in Farmers' Notes.

(a) In accordance with policies prescribed by its own board of directors and the board of the Farm Credit bank that funds it, each direct lender association may invest in notes, sales contracts, and other similar obligations (hereafter Farmers' Notes) that eligible farmers, ranchers, producers or harvesters of aquatic products, and farm-related businesses give to:

(1) Financial institutions; and

(2) Any entity whose primary business is selling agricultural supplies, machinery, or equipment to farmers, ranchers, aquatic producers or harvesters, and farm-related businesses, and extends agricultural or aquatic credit to such customers in the normal course of its business.

(b) Farmers' Notes that each direct lender invests in must be secured by collateral pledged by the individual farmer, rancher, aquatic producer or harvester, or farm-related business. In addition, each Farmers' Note must evidence the funding of:

(1) Agricultural assets that eligible farmers, ranchers, or producers or harvesters of aquatic products use in their agricultural or aquatic operations;

(2) Household appliances, furniture, and goods that eligible farmers, ranchers, or producers or harvesters of aquatic products buy for their living needs from entities identified in paragraph (a)(2) of this section; or

(3) Assets that eligible farm-related businesses use in providing farm-related services to eligible farmers and ranchers.

(c) The total amount that an association may invest in Farmers' Notes, at any one time, must not exceed 15 percent of the balance of its loans outstanding at the close of the association's preceding fiscal year. In addition, the total amount that an association may carry as investments in Farmers' Notes from any one entity that sells, guarantees, insures, or provides another credit enhancement listed in paragraph (d) of this section must not exceed 20 percent of the association's total capital.

(d) All Farmers' Notes in which an association invests shall have at least one of the following credit enhancements:

(1) The selling entity must endorse each Farmers' Note with full recourse;

(2) A guarantee by a creditworthy third party covers the entire principal amount of each Farmers' Note;

(3) Insurance covering the entire principal amount of each Farmers' Note;

(4) The selling entity or a third party maintains a reserve of cash or marketable securities of at least 10 percent of the entire principal amount of each Farmers' Note;

(5) The selling entity or a third party holds a subordinated interest of at least 10 percent of the entire principal amount of each Farmers' Note; or

(6) The entire principal amount of each Farmers' Note is covered by a combination of credit enhancements listed in this section.

Subpart H—Capital Adequacy

3. Amend § 615.5210 by adding new paragraphs (f)(2)(ii)(N), (f)(2)(iii)(D), and (f)(2)(iv)(F) to read as follows:

§ 615.5210 Computation of the permanent capital ratio.

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(N) Investments in Farmers' Notes that:

(*1*) Provide the Farm Credit System direct lender association full recourse against a seller or has other acceptable credit enhancements specified in § 615.5172(d) of this part, and

(*2*) Are guaranteed by an OECD bank or other institution that qualifies for a 20-percent risk weight under this section, or

(*3*) Are sold by entities that:

(*i*) Are rated in one of the highest three investment-grade rating categories from a NRSRO or the investment is guaranteed by a parent company with such a rating. If the entity has more than one NRSRO rating the lowest rating shall apply.

(*ii*) Maintain capital to total assets of at least 9 percent.

(iii) * * *

(D) Investments in Farmers' Notes that:

(1) Provide the Farm Credit System direct lender association full recourse against a seller or has other acceptable credit enhancements specified in § 615.5172(d) of this part, and

(*2*) The seller is not covered by the provisions of paragraph (f)(2)(ii)(N) (20-percent risk weight) of this section, but otherwise meets similar capital, risk identification and control, and operational standards, or

(*3*) The credit provider carries an investment-grade or higher NRSRO rating or the investment is guaranteed by a parent company with such a rating. If the entity has more than one NRSRO rating the lowest rating shall apply.

(iv) * * *

(F) Investments in Farmers' Notes that do not otherwise qualify for a lower risk weight under this section.

* * * * *

Dated: September 8, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–20607 Filed 9–13–04; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE210; Notice No. 23–04–01–SC]

Special Conditions: AMSAFE, Incorporated, Sky International A1, A1A, A1B, Inflatable Five-Point Seatbelt Airbag Restraint

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the installation of an AMSAFE, Inc. Inflatable Five-Point Seatbelt Airbag Restraint on Sky International models A1, A1A, and A1B. These airplanes, as modified by AMSAFE, Inc. will have novel and unusual design features associated with the upper-torso restraint portions of the 5-point safety belt, which contains an integrated airbag device. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. The proposed special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before October 14, 2004.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE210, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE210. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Pat Mullen, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–114, 901 Locust, Kansas City, Missouri, 816–329–4128, fax 816–329–4090, e-mail: *pat.mullen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to CE210". The postcard will be date stamped and returned to the commenter.

Background

On January 15, 2004, AMSAFE, Inc. Aviation Inflatable Restraints Division, 1043 North 47th Avenue, Phoenix, AZ 85043, applied for a supplemental type certificate for the installation of a five-point safety belt restraint system incorporating an inflatable airbag for the pilot and co-pilot seats of the Sky International model A1, A1A, and A1B airplanes. Models A1, A1A, and A1B are single engine, two-place airplanes, arranged in a tandem configuration.

The inflatable restraint system is a five-point safety belt restraint system consisting of a lapbelt and dual shoulder harnesses. An inflatable airbag is attached to one of the shoulder harnesses, and the other shoulder harness is of conventional construction. The inflatable portion of the restraint system will rely on sensors to electronically activate the inflator for deployment. The inflatable restraint system will be installed on both the pilot and co-pilot seats.

In the event of an emergency landing, the airbag will inflate and provide a protective cushion between the occupant's head and structure within the airplane cockpit. This will reduce the potential for head and torso injury. The inflatable restraint behaves in a manner that is similar to an automotive airbag, but in this case, the airbag is integrated into one of the shoulder harnesses. While airbags and inflatable restraints are standard in the automotive industry, the use of an inflatable five-point restraint system is novel for general aviation operations.

The FAA has determined that this project will be accomplished on the basis of providing the same current level of safety of the Sky International A1, A1A, and A1B occupant restraint systems. The FAA has two primary safety concerns with the installation of airbags or inflatable restraints:

- That they perform properly under foreseeable operating conditions; and
- That they do not perform in a manner or at such times to impede the pilot's ability to maintain control of the airplane or constitute a hazard to the airplane or occupants.

The latter point has the potential to be the more rigorous of the requirements. An unexpected deployment while conducting the takeoff or landing phases of flight may result in an unsafe condition. The unexpected deployment may either startle the pilot, or generate a force sufficient to cause a sudden movement of the control stick. Either action could result in a loss of control of the airplane, the consequences of which are magnified due to the low operating altitudes during these phases of flight. The FAA has considered this when establishing the special conditions.

The inflatable restraint system relies on sensors to electronically activate the inflator for deployment. These sensors could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of an inadvertent deployment must be considered in establishing the reliability of the system. AMSAFE, Inc. must show that the effects of an inadvertent deployment in flight are not a hazard to the airplane or that an inadvertent deployment is extremely improbable. In addition, any general aviation aircraft can generate a large amount of cumulative wear and tear on a restraint system. It is likely that the potential for inadvertent deployment increases as a result of this cumulative damage. Therefore, the impact of wear and tear on inadvertent deployment must be considered. Due to the effects of this cumulative damage, a life limit must be established for the appropriate system components in the restraint system design.

There are additional factors to be considered to minimize the chances of inadvertent deployment. General aviation airplanes are exposed to a unique operating environment, since the same airplane may be used by both experienced and student pilots. The effect of this environment on inadvertent deployment must be understood. Therefore, qualification testing of the firing hardware/software must consider the following:

• The airplane vibration levels appropriate for a general aviation airplane; and

• The inertial loads that result from typical flight or ground maneuvers, including gusts and hard landings.

Any tendency for the firing mechanism to activate as a result of these loads or acceleration levels is unacceptable.

Other influences on inadvertent deployment include high intensity electromagnetic fields (HIRF) and lightning. Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. To comply with HIRF and lightning requirements, the AMSAFE, Inc. inflatable restraint system is considered a critical system, since its inadvertent deployment could have a hazardous effect on the airplane.

Given the level of safety of the current Sky International A1, A1A, and A1B occupant restraints, the inflatable restraint system must show that it will offer an equivalent level of protection in the event of an emergency landing. In the event of an inadvertent deployment, the restraint must still be at least as strong as a Technical Standard Order certificated belt and dual shoulder harnesses. There is no requirement for the inflatable portion of the restraint to offer protection during multiple impacts, where more than one impact would require protection.

The inflatable restraint system must deploy and provide protection for each occupant under a crash condition where it is necessary to prevent serious head injury. The seats of the models A1, A1A, and A1B are not certificated to the requirements of § 23.562, and it is not known if they would remain intact following exposure to the crash pulse identified in § 23.562. Therefore, the test crash pulse used to satisfy this requirement may have a peak longitudinal deceleration lower than that required by § 23.562. However, the test pulse onset rate (deceleration divided by time) must be equal to or greater than the onset rate of the pulse described in § 23.562. This will demonstrate that the crash sensor will trigger when exposed to a rapidly applied deceleration, like an actual crash event.

It is possible a wide range of occupants will use the inflatable restraint. Thus, the protection offered by this restraint should be effective for occupants that range from the fifth percentile female to the ninety-fifth percentile male. Energy absorption must be performed in a consistent manner for this occupant range.

In support of this operational capability, there must be a means to verify the integrity of this system before each flight. As an option, AMSAFE, Inc. can establish inspection intervals where they have demonstrated the system to be reliable between these intervals.

It is possible that an inflatable restraint will be "armed" even though no occupant is using the seat. While there will be means to verify the integrity of the system before flight, it is also prudent to require that unoccupied seats with active restraints not constitute a hazard to any occupant. This will protect any individual performing maintenance inside the cockpit while the aircraft is on the ground.

In addition, the design must prevent the inflatable seatbelt from being incorrectly buckled and/or installed such that the airbag would not properly deploy. As an alternative, AMSAFE, Inc. may show that such deployment is not hazardous to the occupant, and will still provide the required protection.

The cockpits of the models A1, A1A, and A1B are confined areas, and the FAA is concerned that noxious gasses may accumulate in the event of restraint deployment. When deployment does occur, either by design or inadvertently, there must not be a release of hazardous quantities of gas or particulate matter into the cockpit.

An inflatable restraint should not increase the risk already associated with fire. Therefore, the inflatable restraint should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the inflator.

Finally, the airbag is likely to have a large volume displacement, and possibly impede the egress of an occupant. Since the bag deflates to absorb energy, it is likely that the inflatable restraint would be deflated at the time an occupant would attempt egress. However, it is appropriate to specify a time interval after which the inflatable restraint may not impede rapid egress. Ten seconds has been chosen as reasonable time. This time limit will offer a level of protection throughout the impact event.

Type Certification Basis

Under the provisions of § 21.101, AMSAFE, Inc. must show that the Sky International models A1, A1A, and A1B, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A22NM 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. A22NM are as follows:

Part 23 of the Federal Aviation Regulations dated February 1, 1965, as amended by 23–1 through 23–31 (normal category) and FAR 36 amended through 36–12. FAR 21 amended through 21–57.

For the models listed above, the certification basis also includes all exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

The Administrator has determined that the applicable airworthiness regulations (*i.e.*, part 23 as amended) do not contain adequate or appropriate safety standards for the AMSAFE, Inc. inflatable restraint as installed on these Sky International models because of a novel or unusual design feature. Therefore, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to that model under the provisions of § 21.101.

Novel or Unusual Design Features

The Sky International models A1, A1A, and A1B will incorporate the following novel or unusual design feature:

The AMSAFE, Inc. Five-Point Safety Belt Restraint System incorporating an inflatable airbag for the pilot and co-pilot seats. The purpose of the airbag is to reduce the potential for injury in the event of an accident. In a severe impact, an airbag will deploy from one shoulder harness, in a manner similar to an automotive airbag. The airbag will deploy between the head of the occupant and cockpit structure. This will, therefore, provide some protection to the head of the occupant. The restraint will rely on sensors to electronically activate the inflator for deployment.

The Code of Federal Regulations state performance criteria for seats and restraints in an objective manner. However, none of these criteria are adequate to address the specific issues raised concerning inflatable restraints.

Therefore, the FAA has determined that, in addition to the requirements of part 21 and part 23, special conditions are needed to address the installation of this inflatable restraint.

Accordingly, these special conditions are adopted for the models A1, A1A, and A1B equipped with the AMSAFE, Inc. five-point inflatable restraint. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Applicability

As discussed above, these special conditions are applicable to the Sky International models A1, A1A, and A1B equipped with the AMSAFE, Inc. five-point inflatable restraint system. Should AMSAFE, Inc. apply at a later date for a supplemental type certificate to modify any other model on Type Certificate number A22NM to incorporate the same novel or unusual design feature, the 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 Sky International models A1, A1A, and A1B. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101 for STC or 21.17 for TC; and 14 CFR 11.38 and 11.19.

The Proposed Special Conditions

The FAA has determined that this project will be accomplished on the basis of not lowering the current level of safety for the Sky International models A1, A1A, and A1B occupant restraint system. Accordingly, the FAA proposes the following special conditions as part of the type certification basis for these models, as modified by AMSAFE, Inc.

Five-Point Safety Belt Restraint System Incorporating an Inflatable Airbag for the Pilot and Co-pilot Seats of the Sky International models A1, A1A, and A1B.

1. It must be shown that the inflatable lapbelt will deploy and provide protection under crash conditions where it is necessary to prevent serious head injuries. Compliance will be demonstrated using the deceleration pulse specified in § 23.562, which may be modified as follows:

a. The peak longitudinal deceleration may be reduced, however the onset rate of the deceleration must be equal to or greater than the crash pulse identified in § 23.562.

b. The peak longitudinal deceleration must be above the deployment threshold of the crash sensor, and equal to or greater than the forward static design longitudinal load factor required by the original certification basis of the airplane.

The means of protection must take into consideration a range of stature from a 5th percentile female to a 95th percentile male. The inflatable restraint must provide a consistent approach to energy absorption throughout that range.

2. The inflatable restraint must provide adequate protection for each occupant. In addition, unoccupied seats that have an active restraint must not constitute a hazard to any occupant.

3. The design must prevent the inflatable restraint from being incorrectly buckled and/or incorrectly installed such that the airbag would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required protection.

4. It must be shown that the inflatable restraint system is not susceptible to inadvertent deployment as a result of wear and tear or the inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings) that are likely to be experienced in service.

5. It must be shown (or be extremely improbable) that an inadvertent deployment of the restraint system during the most critical part of the flight does not impede the pilot's ability to maintain control of the airplane or cause an unsafe condition (or hazard to the airplane). In addition, a deployed inflatable restraint must be at least as strong as a Technical Standard Order (C114) 5-point harness.

6. It must be shown that deployment of the inflatable restraint system is not hazardous to the occupant or result in injuries that could impede rapid egress. This assessment should include occupants whose restraint is loosely fastened.

7. It must be shown that an inadvertent deployment that could cause injury to a standing or sitting person is improbable.

8. It must be shown that the inflatable restraint will not impede rapid egress of the occupants 10 seconds after its deployment.

9. For the purposes of complying with HIRF and lightning requirements, the inflatable restraint system is considered a critical system since its deployment could have a hazardous effect on the airplane.

10. It must be shown that the inflatable restraints will not release hazardous quantities of gas or particulate matter into the cabin.

11. The inflatable restraint system installation must be protected from the effects of fire such that no hazard to occupants will result.

12. There must be a means to verify the integrity of the inflatable restraint activation system prior to each flight or it must be demonstrated to reliably operate between inspection intervals.

13. A life limit must be established for appropriate system components.

14. Qualification testing of the internal firing mechanism must be performed at vibration levels appropriate for a general aviation airplane.

Issued in Kansas City, Missouri on August 26, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–20622 Filed 9–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–01–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech 100, 200, and 300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 93–25–07, which applies to Raytheon Aircraft Company (Raytheon) Beech 100, 200, and 300 series airplanes. AD 93–25–07 currently requires you to repetitively inspect the fuselage stringers for cracks and modify at certain times depending on the number of cracked stringers. This proposed AD is the result of FAA's policy (since 1996) to not allow airplane operation when known cracks exist in primary structure. The fuselage structure is

considered primary structure and operation is currently allowed for a certain period of time if less than five fuselage stringers are cracked. Consequently, this proposed AD would retain the inspection and modification requirements of AD 93–25–07, but would require you to repair any cracked fuselage stringers. We are issuing this proposed AD to detect and correct any cracked fuselage stringers in the rear pressure bulkhead area, which could result in structural damage to the fuselage. This damage could lead to failure of the fuselage with potential loss of control of the airplane.

DATES: We must receive any comments on this proposed AD by November 2, 2004.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–01–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2004–CE–01–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–01–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2004–CE–01–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

Has FAA taken any action to this point? Reports of cracks on the fuselage stringers in the rear pressure bulkhead area on Raytheon Beech 100, 200, and 300 series airplanes caused us to issue AD 93–25–07, Amendment 39–8773. AD 93–25–07 currently requires the following on Raytheon Beech Models 200, A200, B200, A100–1, 200C, A200C, B200C, 200CT, A200CT, B200CT, 200T, B200T, 300, B300, and B300C airplanes:

—Repetitive inspections of the fuselage stringers for cracks; and

—Modification at certain times depending on the number of cracked stringers.

What has happened since AD 93–25–07 to initiate this proposed action? As currently written, AD 93–25–07 allows continued flight if cracks are found in less than five fuselage stringers in the area of the rear pressure bulkhead. In 1996, FAA developed policy to not allow airplane operation when known cracks exist in primary structure, unless the ability to sustain limit and ultimate load with these cracks is proven. The fuselage stringers in the area of the rear pressure bulkhead are considered primary structure.

This proposed AD would bring the actions of AD 93–25–07 in compliance with FAA policy. Therefore, FAA has determined:

—That airplane operation on the affected airplanes should not be allowed for more than 25 hours time-in-service (TIS) if less than five fuselage stringers (Stringer Nos. 5 through 11) in the rear pressure bulkhead are cracked; and

—That no operation should be allowed until modification for any airplane with five or more cracked fuselage stringers (Stringer Nos. 5 through 11) in the rear pressure bulkhead.

The FAA has also identified other airplanes that should be affected by this action.

What is the potential impact if FAA took no action? Cracked fuselage stringers in the rear pressure bulkhead area, if not detected and corrected, could result in structural damage to the fuselage. This damage could lead to failure of the fuselage with potential loss of control of the airplane.

Is there service information that applies to this subject? Raytheon has issued Mandatory Service Bulletin SB 53–2472, Rev. 4, Revised: July, 2003.

What are the provisions of this service information? The service bulletin includes procedures for:

—Inspecting the fuselage stringers (Nos. 5 through 11) in the rear pressure bulkhead for cracks; and

—Incorporating a modification kit on any cracked fuselage stringer.

Determination and Requirements of This Proposed AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing AD action.

What would this proposed AD require? This proposed AD would supersede AD 93–25–07 with a new AD that would retain the requirement of repetitively inspecting the fuselage stringers for cracks, but would require the repair of any cracked fuselage stringers. The FAA is proposing a grace period of 25 cycles for all airplanes with less than five cracked fuselage stringers. The repetitive inspections would no longer be required when all fuselage stringers (Nos. 5 though 11) in the rear pressure bulkhead are modified. The specific Raytheon Beech airplane models affected by this AD are as follows:

Model	Serial Nos.
A100–1 (U–21J)	BB–3 through BB–5.
200 and B200	BB–2 and BB–6 through BB–1462.
A200 (C–12A) and A200 (C–12C).	BC–1 through BC–75 and BD–1 through BD–30.
A200C (UC–12B)	BJ–1 through BJ–66.
A200CT (C–12D)	BP–1, BP–22, and BP–24 through BP–51.
A200CT (FWC–12D)	BP–7 through BP–11.
A200CT (RC–12D)	GR–1 through GR–13.
A200CT (C–12F)	BP–52 through BP–63.
A200CT (RC–12G) ...	FC–1 and FC–3.
A200CT (RC–12H)	GR–14 through GR–19.
A200CT (RC–12K)	FE–1 through FE–9.

Model	Serial Nos.
A200CT (RC–12P)	FE–10 through FE–24.
A200CT (RC–12K)	FE–25 through FE–31.
200C and B200C	BL–1 through BL–72 and BL–124 through BL–138.
200CT and B200CT ..	BN–1 through BN–4.
B200T and 200T	BT–1 through BT–38.
B200C (C–12F)	BL–73 through BL–112 and BL–118 through BL–123.
B200C (C–12F)	BP–64 through BP–71.
B200C (UC–12F)	BU–1 through BU–10.
B200C (UC–12M)	BV–1 through BV–12.
B200CT	FG–1 and FG–2.
300	FA–1 through FA–228.
300	FF–1 through FF–19.
B300	FL–1 through FL–103.
B300C	FM–1 through FM–8.
B300C	FN–1.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 2,300 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do each proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours at $65 per hour = $130 per airplane.	No special parts necessary to do the inspection.	$130 per airplane	$299,000

We estimate the following costs to incorporate the fuselage stringer repair kit that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this repair kit:

Labor cost	Parts cost	Total cost per airplane
11 workhours at $65 per hour = $715 per airplane.	Approximately $200 per repair kit with one to three kits necessary depending on the extent of the cracks (possible total of $600 per airplane).	Ranging from $915 per airplane to $1,315 per airplane.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2004–CE–01–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 93–25–07, Amendment 39–8773, and by adding a new AD to read as follows:

Raytheon Aircraft Company: Docket No. 2004–CE–01–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by November 2, 2004.

What Other ADs Are Affected By This Action?

(b) This AD supersedes AD 93–25–07, Amendment 39–8773.

What Airplanes Are Affected By This AD?

(c) This AD affects the following Beech airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
(1) A100–1 (U–21J) ..	BB–3 through BB–5.
(2) 200 and B200	BB–2 and BB–6 through BB–1462.
(3) A200 (C–12A) and A200 (C–12C).	BC–1 through BC–75 and BD–1 through BD–30.
(4) A200C (UC–12B)	BJ–1 through BJ–66.
(5) A200CT (C–12D)	BP–1, BP–22, and BP–24 through BP–51.
(6) A200CT (FWC–12D).	BP–7 through BP–11.
(7) A200CT (RC–12D).	GR–1 through GR–13.
(8) A200CT (C–12F)	BP–52 through BP–63.
(9) A200CT (RC–12G).	FC–1 and FC–3.
(10) A200CT (RC–12H).	GR–14 through GR–19.
(11) A200CT (RC–12K).	FE–1 through FE–9.
(12) A200CT (RC–12P).	FE–10 through FE–24.

Model	Serial Nos.
(13) A200CT (RC–12K).	FE–25 through FE–31.
(14) 200C and B200C	BL–1 through BL–72 and BL–124 through BL–138.
(15) 200CT and B200CT.	BN–1 through BN–4.
(16) 200T and B200T	BT–1 through BT–38.
(17) B200C (C–12F)	BL–73 through BL–112 and BL–118 through BL–123.
(18) B200C (C–12F)	BP–64 through BP–71.
(19) B200C (UC–12F)	BU–1 through BU–10.
(20) B200C (UC–12M).	BV–1 through BV–12.
(21) B200CT	FG–1 and FG–2.
(22) 300	FA–1 through FA–228.
(23) 300	FF–1 through FF–19.
(24) B300	FL–1 through FL–103.
(25) B300C	FM–1 through FM–8.
(26) B300C	FN–1.

What Is the Unsafe Condition Presented in This AD?

(d) As currently written, AD 93–25–07 allows continued flight if cracks are found in less than five fuselage stringers in the area of the rear pressure bulkhead. In 1996, FAA developed policy to not allow airplane operation when known cracks exist in primary structure, unless the ability to sustain limit and ultimate load with these cracks is proven. The fuselage stringers in the area of the rear pressure bulkhead are considered primary structure. This AD will bring the actions of AD 93–25–07 in compliance with FAA policy. The actions specified in this AD are intended to detect and correct any cracked fuselage stringers in the rear pressure bulkhead area, which could result in structural damage to the fuselage. This damage could lead to failure of the fuselage with potential loss of control of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) *For airplanes that have known cracks that exist in any of the aft fuselage stringer locations (No. 5 through No. 11 on both the left-hand and right-hand sides).* Either modify or incorporate repairs as specified below. These cracks could have been detected through compliance with AD 93–25–07 and/or Raytheon Mandatory Service Bulletin SB 53–2472, any revision level: (i) Incorporate the applicable modification kit or kits as specified in Raytheon Mandatory Service SB 53–2472, Rev. 4, Issued: June, 1993, Revised: 1993, Revised: July, 2003; or (ii) Incorporate external doubler repairs on all aft fuselage stringer locations (No. 5 through No. 11 on both the left-hand and right-hand sides).	*If airplane has than five known cracked stringers:* Within 25 cycles after the effective date of this AD, unless previously done. If cycles are unknown, then you may divide hours time-in-service (TIS) by .75 (18.75 hours TIS ÷ .75 = 25 cycles). *If airplane has five or more known cracked stringers:* Prior to further flight after the effective date of this AD, unless previously done. AD 93–25–07 already required this.	Incorporate the modification kit(s) following the procedures in Raytheon Mandatory Service Bulletin SB 53–2472, Rev. 4, Issued: June, 1993, Revised: July, 2003, Incorporate the external doubler repairs following the procedures in the maintenance manual.
(2) For all airplanes that do not have either the modifications or repairs specified in paragraphs (e)(1)(i) and (e)(1)(ii) of this AD incorporated in all aft fuselage stringer locations (No. 5 through No. 11 on both the left-hand and right-hand sides): Inspect these aft fuselage stringers. You may terminate the repetitive inspections when all aft fuselage stringer locations (No. 5 through No. 11 on both the left-hand and right-hand sides) are modified.	*For airplanes affected by AD 93–25–07:* Initially inspect at the next inspection interval required by AD 93–25–07. Repetitively inspect thereafter at intervals not to exceed 500 cycles. If cycles are unknown, then you may divide hours time-in-service (TIS) by .75 (375 hours TIS ÷ .75 = 500 cycles). *For airplanes not affected by AD 93–25–07:* Initially inspect upon accumulating 2,500 cycles on the fuselage or within the next 25 cycles after the effective date of this AD, whichever occurs later, unless previously done. Repetitively inspect thereafter at intervals not to exceed 500 cycles. If cycles are unknown, then you may divide hours time-in-service (TIS) by .75 (1,875 hours TIS ÷ .75 = 2,500 cycles; 375 hours TIS ÷ .75 = 500 cycles; and 18.75 hours TIS ÷ .75 = 25 cycles).	Inspect following the procedures in Raytheon Mandatory Service Bulletin SB 53–2472, Rev. 4, Issued: June, 1993, Revised: July 2003.
(3) If any cracks are found during any inspection required by this AD, do one of the following: (i) Incorporate the applicable modification kit or kits as specified in Raytheon Mandatory Service Bulletin SB 53–2472, Rev. 4, Issued: June, 1993, Revised: July, 2003; or (ii) Incorporate external doubler repairs on all aft fuselage stringer locations (No. 5 through No. 11 on both the left-hand and right-hand sides).	*If less than five cracked stringers are found:* Within 25 cycles after the effective date of this AD, unless previously done. If cycles are unknown, then you may divide hours time-in-service (TIS) by .75 (18.75 hours TIS ÷ .75 = 25 cycles). *If five or more cracked stringers are found:* Prior to further flight after any inspection where five cracked stringers are found, unless previously done.	Incorporate the modification kit(s) following the procedures in Raytheon Mandatory Service Bulletin SB 53–2472, Rev. 4, Issued: June, 1993, Revised: July, 2003. Incorporate the external doubler repairs following the procedures in the maintenance manual.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance,

contact Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4107.

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 8, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–20688 Filed 9–13–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–248–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of information from Kentucky pertaining to its regulatory program (the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky submitted examples of common husbandry practices in response to a required amendment. We are reviewing that information to determine if it satisfies our requirements. If so, the required amendment will be removed and the provisions previously disapproved will be approved. The decision will be announced in a future **Federal Register** notice.

This document gives the times and locations that the Kentucky program and this submittal are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., e.s.t., October 14, 2004. If requested, we will hold a public hearing on October 9, 2004. We will accept requests to speak until 4 p.m., e.s.t., on September 29, 2004.

ADDRESSES: You may submit comments, identified by "KY–248–FOR/ Administrative Record No. 1634" by any of the following methods:

- *E-mail: bkovacic@osmre.gov.*
- *Mail/Hand Delivery:* William J. Kovacic, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, *Telephone:* (859) 260–8400.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency docket number "KY–248–FOR/Administrative Record No. KY–1634" for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" section in this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Docket: You may review copies of the Kentucky program, this submission, a listing of any scheduled public hearings, and all written comments received in response to this document at OSM's Lexington Field Office at the address listed above during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the submission by contacting OSM's Lexington Field Office.

In addition, you may receive a copy of the submission during regular business hours at the following location:

Department for Natural Resources, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400. Internet: *bkovacic@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Submission

By letter dated July 29, 2004, Kentucky sent us information pertaining to its program, ([KY–248–FOR], Administrative Record No. KY–1634), under SMCRA (30 U.S.C. 1201 *et seq.*), in response to a required amendment at 30 CFR 917.16(i). A portion of the required amendment resulted from OSM's decision on June 9, 1993, to not approve proposed changes to 405 Kentucky Administrative Regulations (KAR) 16:200 sections 1(7)(a), (7)(a)1 through 5, 1(7)(b), and 1(7)(d) (58 FR 32283). The finding stated, in part, that Kentucky (unlike other States) had not submitted any administrative record information to demonstrate that its proposed practices were normal husbandry practices within Kentucky.

Kentucky has now submitted examples of common husbandry practices "that would be encountered on lands in Kentucky and would not restart or extend the bond liability period." The examples pertain to the following categories of lands: hayland or pasture; forestland, commercial forestry, or fish and wildlife; and commercial, industrial, residential, or recreational. Kentucky references materials from the Kentucky College of Agriculture Cooperative Extension Service and the University of Kentucky, as well as practices recognized by other regulatory agencies. It notes that the University of Kentucky's ongoing research could lead to improved silvicultural and agricultural production which may result in future changes to husbandry practices.

We will review the information that Kentucky has submitted to determine if the practices meet the criteria identified in the notice. If the practices meet the requirements, we will approve the previously disapproved provisions and

remove the required amendment at 30 CFR 917.16(i).

The full text of the submission is available for you to read at the locations listed above under **ADDRESSES.**

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the submission, it will become part of the program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: KY–248–FOR/Administrative Record No. KY–1634" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Lexington Field Office at (859) 260–8400.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on September 29, 2004. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing. To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the submission, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian Tribes.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C.804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 13, 2004.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 04–20660 Filed 9–13–04; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–121–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendments.

SUMMARY: We are announcing receipt of a proposed amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment revises Virginia's Coal Surface Mining Reclamation Regulations concerning performance bonds furnished pursuant to the Coal Surface Mining Reclamation (Pool Bond) Fund. The amendment is intended to conform the performance bond release procedures that are applied to Virginia's "alternative bonding system" with bond release procedures used for other performance bonds. The amendment is also intended to clarify language regarding minimum bond amounts set for permits.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on October 14, 2004. If requested, we will hold a public hearing on the amendment on October 9, 2004. We will accept requests to speak at hearing until 4 p.m. (local time), on September 29, 2004.

ADDRESSES: You may submit comments, identified by VA–121–FOR, by any of the following methods:

- *E-mail: rpenn@osmre.gov.* Include VA–121–FOR in the subject line of the message.
- *Mail/Hand Delivery:* Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: You may review copies of the Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Big Stone Gap Field Office.

Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523–4303. E-mail: *rpenn@osmre.gov.*

Mr. Leslie S. Vincent, Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (540) 523–8100. E-mail: *lsv@mme.state.va.us.*

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office; Telephone: (540) 523–4303. Internet: *rpenn@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent

with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Virginia program in the December 15, 1981, **Federal Register** (46 FR 61088). You can also find later actions concerning Virginia's program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

II. Discussion of the Proposed Amendment

By letter dated July 20, 2004 (Administrative Record Number VA–1036) the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. In its letter, the DMME stated that Virginia is amending its regulations at 4 Virginia Administrative Code (VAC) 25–130–801.17, to conform the performance bond release procedures that are applied to bonds furnished pursuant to the Coal Surface Mining Reclamation (Pool Bond) Fund, Virginia's "alternative bonding system," with bond release procedures used for other performance bonds. The DMME stated that the amendment will allow use of a phased bond release for all permitted coal mine sites in Virginia. The DMME stated that the amendment also clarifies language regarding minimum bond amounts set for permits.

The Virginia regulations at 4 VAC 25–130 part 801 concern the Coal Surface Mining Reclamation Fund, penalties, and self-bonding. The proposed amendment revises 4 VAC 25–130–801.17, concerning bond release application, and 4 VAC 25–130–801.18, concerning criteria for bond release, as follows:

4 VAC 25–130–801.17

This provision is amended by adding and deleting language at 4 VAC 25–130–801.17(a), by deleting 4 VAC 25–130–801.17(a)(1) through (a)(3), and by deleting 4 VAC 25–130–801.17(b) through (e). As amended, 4 VAC 25–130–801.17 provides as follows:

(a) The permittee participating in the Pool Bond Fund, or any person authorized to act upon his behalf, may file an application with the division [Division of Mined Land Reclamation] for the Phase I, II or III release of the bond furnished in accordance with 4 VAC 25–130–801.12(b) for the permit area or any applicable increment thereof. The bond release application, the procedural requirements and the released percentages shall be consistent with the release criteria of 4 VAC 25–130–800.40. However, in no event shall the total bond of the permit be less than the minimum amounts established pursuant to Section 45.1–241 and 45.1–270.3.B of the Virginia Coal Surface Mining Control and Reclamation Act prior to completion of Phase III reclamation of the entire permit area.

4 VAC 25–130–801.18

This provision is amended by adding and deleting language at 4 VAC 25–130–801.18(a) and (b), by deleting 4 VAC 25–130–801.18(c), and by amending and re-codifying existing 4 VAC 25–130–801.18(d) as 4 VAC 25–130–801.18(c). As amended, 4 VAC 25–130–801.18 provides as follows:

(a) The division shall release bond furnished in accordance with Section 45.1–241 and 45.1–270.3 of the Virginia Coal Surface Mining Control and Reclamation Act through the standards specified at 4 VAC 25–130–800.40 upon receipt of an application for Phase I, II or III release.

(b) The division shall terminate jurisdiction for the permit area, or any increment thereof upon approval of the Phase III bond release for that area.

(c) In the event a forfeiture occurs the division may, after utilizing the available bond monies, utilize the Fund as necessary to complete reclamation liabilities for the permit area.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Virginia program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Big Stone Gap Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII, Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS NO. VA–121–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Big Stone Gap Field office at (540) 523–4303.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on September 29, 2004. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person

listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 4, 2004.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 04–20661 Filed 9–13–04; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 16

[OEI–2002–0009; FRL–7532–2]

RIN 2025–AA13

Implementation of Privacy Act of 1974; Revision to the Privacy Act Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) proposes to revise its regulations implementing the Privacy Act (PA). In accordance with the principles of the National Performance Review, EPA is streamlining and condensing its regulations by removing superfluous language and using simpler language whenever possible. In addition, these regulations contain exemptions for existing systems and add new exempted system of records.

DATES: Comments must be received on or before October 14, 2004.

ADDRESSES: Submit your comments, identified by Docket ID No. OEI–2002–0009, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *oei.docket@epa.gov*.
- Fax: 202 566–1753
- Mail: Office of Environmental Information Docket, Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OEI–2002–0009. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Office of Environmental Information Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. e.s.t., Monday through Friday, excluding legal holidays. The Docket telephone number is 202 566–1752. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Judy E. Hutt, PA Officer, Records, Privacy and FOIA Branch, Collection Strategies Division, Office of Information Collection, Office of Environmental Information (OEI), (2822T), EPA, 1200 Pennsylvania Ave, NW., Washington, DC 20460; Phone (202) 566–1668; Fax, (202) 566–1639; *hutt.judy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. (For CBI information in a disk or CD–ROM that you mail to EPA, 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 claimed as CBI). In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Description of Proposed Rules

EPA proposes to revise its PA rules. All exemptions for existing systems have been revised to meet statutory requirements and several new exempt systems are added under these rules. Other revisions are generally minor and include: (1) Making the language gender neutral; (2) removing language inconsistencies; (3) a statement of EPA's right to determine the adequacy of identification; (4) allowing the Office of Inspector General to make appeal determinations related to its PA systems of records; and (5) changing the process for submitting PA requests to the Agency.

III. Statutory Authority

EPA is proposing this rule under the authority of 5 U.S.C. 301, 552a (as revised), and 553.

IV. Administrative Requirements

A. Regulatory Flexibility Act, as Amended

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as that term is defined in the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

EPA has determined that this proposed rule will not have a significant economic impact on the small entities. Under the PA, no fees shall be charged for providing the first copy of a record or any portion to an individual to whom the record pertains. The fee schedule for reproducing other records is the same as that set forth in 40 CFR 21.06. Therefore, under 5 U.S.C. 605(b), I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

This proposed rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It pertains solely to the dissemination of information under the PA.

C. Environmental Impact

This proposed rule is expected to have no environmental impact. It pertains solely to the dissemination of information under the PA.

D. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], EPA must determine whether this proposed rule is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

The Agency has determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and therefore not subject to OMB review.

E. Executive Order 13132 on Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175 on Consultation With Indian Tribal Governments

Executive Order 13175, entitled, "A Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

G. Unfunded Mandates Reform Act of 1995

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or proposed rule that includes a federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, for any rule subject to Section 202, EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this proposed rule does not include a Federal mandate as defined in UMRA. This proposed rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and does not establish regulatory requirements that may significantly or uniquely affect small governments.

H. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866. and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned

rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This proposed rule is not subject to Executive Order 13045 because it is neither economically significant regulatory action as defined under Executive Order 12866 nor does it concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect of children.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when EPA decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve any technical standards, and EPA is not considering the use of any voluntary consensus standards. Accordingly, this proposed rule is not subject to the requirements of the NTTAA.

J. Executive Order 13211 (Energy Effects)

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. EPA has concluded that this rule is not likely to have any adverse energy effects.

List of Subjects in 40 CFR Part 16

Environmental protection, Administrative practice and procedure, Privacy Act, Government employees.

Dated: August 3, 2004.

Kimberly T. Nelson,

Assistant Administrator and Chief Information Officer.

For the reasons set out above, EPA proposes to revise 40 CFR Part 16 as follows:

PART 16—IMPLEMENTATION OF PRIVACY ACT OF 1974

Sec.

Authority: 5 U.S.C. 301, 552a (as revised).

§ 16.1 Purpose and scope.

(a) This part implements the Privacy Act of 1974 (5 U.S.C. 552a) (PA or Act) by establishing Environmental Protection Agency (EPA or Agency) policies and procedures that permit individuals to obtain access to and request amendment or correction of information about themselves that is maintained in Agency systems of records. This part also establishes policies and procedures for administrative appeals of requests for access to, or correction or amendment of, records. This part does not expand or restrict any rights granted under the PA.

(b) These procedures apply only to requests by individuals seeking their own records and only to records maintained by EPA. These procedures do not apply to those systems specifically exempt under §§ 16.11 and 16.12 herein or to any government-wide systems maintained by other Federal agencies.

(c) PA requests made by individuals for access to records about themselves and which are processed under this Part, will also be treated as FOIA requests and processed as appropriate under 40 CFR Part 2 to ensure full disclosure.

§ 16.2 Definitions.

As used in this Part:

(a) The terms *individual, maintain, record, and system of records* have the same meanings as specified in 5 U.S.C. 552a.

(b) *EPA* means the Environmental Protection Agency.

(c) *Working days* means calendar days excluding Saturdays, Sundays, and Federal holidays.

§ 16.3 Procedures for accessing, correcting, or amending personal records.

(a) Any individual who—

(1) Wishes to be informed whether a system of records maintained by EPA contains any record pertaining to him or her;

(2) Seeks access to an EPA record about him or her that is maintained in an EPA PA system of records, including an accounting of any disclosures of that record; or

(3) Seeks to amend or correct a record about him or her that is maintained in a system of records, may submit a written request to the EPA PA Officer, Environmental Protection Agency (MC–2822T), 1200 Pennsylvania Avenue NW., Washington, DC 20460 or via e-mail to *http://www.epa.gov/privacy,* or by fax, (202) 566–1639.

(b) All requests for access to, or the correction or amendment of, personal records should cite the PA of 1974 and reference the type of request being made (*i.e.*, access, correction or amendment). Requests must include;

(1) The name of the individual making the request;

(2) The name of the PA system of records (as set forth in **Federal Register** PA systems of records notices) to which the request relates;

(3) A description of the records sought;

(4) A statement whether a personal inspection of the records or a copy of the records by mail is desired; and

(5) A statement declaring his or her identify and stipulating that he or she understands it is a misdemeanor punishable by fine up to $5,000 to knowingly and willfully seek or obtain access to records about another individual under false pretenses.

(4) A requester who cannot determine which PA system of records to request may ask for assistance by writing to the EPA PA Officer, Environmental Protection Agency (MC–2822T), 1200 Pennsylvania Avenue NW., Washington, DC 20460 or via e-mail to *http://www.epa.gov/privacy*, or by fax, (202) 566–1639.

§ 16.4 Times, places, and requirements for identification of individuals making requests.

(a) If an individual requesting access under § 16.3 asks for personal inspection of records, and if EPA grants the request, the individual may appear at the time and place specified in EPA's response or arrange another time with the appropriate Agency official.

(b) Before conducting a personal inspection of his or her records, an individual must present sufficient identification (*e.g.*, driver's license,

employee identification card, social security card, or credit card) to establish that he or she is the subject of the records. EPA reserves the right to determine the adequacy of the identification. (An individual who is unable to provide the identification described under paragraph (b) of this section must provide a statement declaring his or her identify and stipulating that he or she understands it is a misdemeanor punishable by fine up to $5,000 to knowingly and willfully seek or obtain access to records about another individual under false pretenses.)

(c) An individual may have another person accompany him or her during inspection of the records, and the system manager may require the requesting individual to sign a statement authorizing disclosure of the record in the presence of that other person.

(d) An individual may request a copy of the requested record.

(e) No verification of identity will be required where the records sought have been determined to be publicly available under the Freedom of Information Act.

§ 16.5 Request for correction or amendment of record.

An individual may request correction or amendment of any record pertaining to him or her in a system of records maintained by EPA by submitting a request in writing to the EPA PA Officer, Environmental Protection Agency (MC–2822T), 1200 Pennsylvania Avenue NW., Washington, DC 20460 or via e-mail to *http://www.epa.gov/privacy*, or by Fax, (202) 566–1639. The following information must be provided:

(1) The name of the individual making the request;

(2) The name of the system of records;

(3) A copy or detailed description of the information sought to be corrected or amended and the specific reasons for the correction or amendment; and

(4) Sufficient documentation of identity as described under § 16.4(b). (An individual who is unable to provide identification under § 16.4(b), or is submitting a request in writing, or on line, must provide a statement declaring his or her identify and stipulating that he or she understands it is a misdemeanor punishable by fine up to $5,000 to knowingly and willfully seek or obtain access to records about another individual under false pretenses.)

§ 16.6 Initial decision on request for access to, or correction or amendment of, records.

(a) Within 10 working days of receipt of a request, the Agency PA Officer will send a letter to the requester acknowledging receipt of the request and promptly forward it to the manager or designee of the system of records where the requested record is located with instructions to:

(1) Make a determination whether to permit access to the record, or to make the requested correction or amendment;

(2) Inform the requester of that determination and, if the determination is to deny access to the record, or to not correct or amend it, the reason for that decision and the procedures for appeal.

(b) If the system manager or designee is unable to decide whether to grant a request of access to, or amendment or correction of, a record within 30 working days of the Agency's receipt of the request, he or she will inform the requester reasons for the delay, and an estimate of when a decision will be made.

(c) In reviewing a request for the correction or amendment of a record, the system manager or designee will be guided by the requirements of 5 U.S.C. 552a(e)(1) and (e)(5).

(d) A system manager or designee who decides to grant all or any portion of a request to correct or amend a record will inform any person or entity outside EPA that was provided the record of the correction or amendment, and, where there is an accounting of that disclosure, make a note of the action taken in the accounting.

(e) If a request pursuant to § 16.3 for access to a record is in a system of records which is exempted, the records system manager or designee will decide whether any information will nonetheless be made available. If the decision is to deny access, the reason for denial and the appeal procedure will be given to the requester.

(f) A person whose request for access is initially denied may appeal that denial to EPA's PA Officer. EPA's General Counsel will decide the appeal within 30 working days. If an appeal concerns a system of records maintained by the Office of Inspector General, the PA Officer will forward the appeal to the Inspector General who will decide on the appeal in accordance with § 16.7. The Inspector General will carry out all responsibilities with respect to the appeal that are otherwise assigned to EPA's General Counsel under § 16.7.

(g) If the appeal under § 16.7 (e)(6) is denied, the requester will be notified of the right to seek judicial review in accordance with subsection (g) of the PA.

§ 16.7 The appeal process.

(a) An individual whose request for access to, or correction or amendment of, a record is initially denied and who wishes to appeal that denial may do so by sending a letter to EPA's PA Officer within 30 days of the receipt of the initial denial. The appeal must identify and restate the initial request. If an appeal concerns an adverse decision by the Office of Inspector General, the PA Officer will forward it to the Inspector General, or his or her designee, who will then act on the appeal. The Inspector General, or his or her designee, will carry out all responsibilities with respect to PA appeals that are otherwise assigned to EPA's General Counsel under this section.

(b) EPA's General Counsel, or his or her designee, will make final decisions on PA appeals within 30 working days from the date on which the appeal is properly received in the Office of General Counsel, unless, for good cause shown, the 30-day period is extended and the requester is notified of the extension, in writing. Such extensions will be utilized only in exceptional circumstances.

(c) In conducting PA appeals, the General Counsel, or his or her designee, will be guided by the requirements of 5 U.S.C. 552a(e)(1) and (e)(5).

(d) If an appeal is granted in whole or in part, the requester will be notified, in writing, and access to the record will be granted, or the correction or amendment of the record will be made. In all such cases, the PA Officer will ensure that paragraph (d) of this section is complied with.

(e) If the General Counsel decides not to grant all or any portion of an appeal, the General Counsel will inform the requester:

(1) Of the decision and its basis;

(2) Of the requester's right to file a concise statement of reasons for disagreeing with EPA's decision;

(3) Of the procedures for filing such statement of disagreement;

(4) That such statements of disagreements will be made available in subsequent disclosures of the record, together with an agency statement (if deemed appropriate) summarizing its refusal;

(5) That prior recipients of the disputed record will be provided with statements as in paragraph (e)(4) of this section, to the extent that an accounting of disclosures is maintained under 5 U.S.C. 552a(c); and

(6) Of the requester's right to seek judicial review under 5 U.S.C. 552a(g).

§ 16.8 Special procedures: Medical Records.

Should EPA receive a request for access to medical records (including psychological records) disclosure of which the system manager decides would be harmful to the individual to whom they relate, EPA may refuse to disclose the records directly to the individual and instead offer to transmit them to a physician designated by the individual.

§ 16.9 Fees.

No fees will be charged for providing a copy of the first 100 pages of a record or any portion of a record to an individual to whom the record pertains. The fee schedule for reproducing other records is the same as that set forth in 40 CFR 2.107.

§ 16.10 Penalties.

The Act provides, in pertinent part: "Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000." (5 U.S.C 5552a (i)(3))

§ 16.11 General exemptions.

(a) *Systems of records affected.* EPA–17 OCEFT Criminal Investigative Index and Files.

EPA–40 Inspector General's Operation and Reporting (IGOR) System Investigative Files.

EPA–46 OCEFT/NEIC Master Tracking System.

(b) *Authority.* Under 5 U.S.C. 552a(j)(2) of the Act, the head of any Federal agency may by rule exempt any PA system of records within the agency from certain provisions of the Act, if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws and which consists of:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

(c) *Qualification for exemption.* (1) The Agency's system of records, EPA–17 system of records is maintained by the Criminal Investigation Division, Office of Criminal Enforcement, Forensics, and Training, a component of EPA which performs as its principal function activities pertaining to the enforcement of criminal laws. Authority for the Division's criminal law enforcement activities comes from Powers of Environmental Protection Agency, 18 U.S.C. 3063; Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9603; Resource Conservation and Recovery Act, 42 U.S.C. 6928; Federal Water Pollution Control Act, 33 U.S.C. 1319, 1321; Toxic Substances Control Act, 15 U.S.C. 2614, 2615; Clean Air Act, 42 U.S.C. 7413; Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136j, 136l; Safe Drinking Water Act, 42 U.S.C. 300h–2, 300i–1; Noise Control Act of 1972, 42 U.S.C. 4912; Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. 11045; and the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1415.

(2) The Agency's system of records, EPA–40 system of records is maintained by the Office of Investigations of the Office of Inspector General (OIG), a component of EPA that performs as its principal function activities pertaining to the enforcement of criminal laws. Authority for the criminal law enforcement activities of the OIG's Office of Investigations is the Inspector General Act of 1978, as amended, 5 U.S.C. app. 3.

(3) The Agency's system of records, EPA–46 system of records is maintained by the National Enforcement Investigations Center, Office of Criminal Enforcement, Forensics, and Training, a component of EPA which performs as its principal function activities pertaining to the enforcement of criminal laws. Authority for the criminal law enforcement activities comes from Reorganization Plan No. 3 of 1970 (5 U.S.C. app. 1), effective December 2, 1970; Powers of Environmental Protection Agency, 18 U.S.C. 3063; Comprehensive Environmental Response Compensation and Liability Act , 42 U.S.C. 9603; Resource Conservation and Recovery Act, 42 U.S.C. 6928; Federal Water Pollution Control Act, 33 U.S.C. 1319, 1321; Toxic Substances Control Act, 15 U.S.C. 2614, 2615; Clean Air Act, 42 U.S.C. 7413; Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136j, 136l; Safe Drinking Water Act, 42 U.S.C. 300h–2, 300i–1; Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. 11045; and the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1415.

(d) *Scope of Exemption.* EPA systems of records 17, 40, and 46 are exempt from the following provisions of the PA: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (2), (3), (4) (G), and (H), (5), and (8); (f)(2) through (5); and (g). To the extent that the exemption for EPA systems of records 17, 40, and 46 claimed under 5 U.S.C. 552a(j)(2) of the Act is held to be invalid, then an exemption under 5 U.S.C. 552a(k)(2) is claimed for these systems of records from (c)(3), (d), (e)(1), (e)(4)(G), (H), and (f)(2) through (5). For Agency's system of records, EPA system 40, an exemption is separately claimed under 5 U.S.C. 552(k)(5) from (c)(3), (d), (e)(1), (e)(4)(G), (4)(H), and (f)(2) through (5).

(e) *Reasons for exemption.* EPA systems of records 17, 40, and 46 are exempt from the above provisions of the PA for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record upon request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(2) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act. Since EPA is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, this section is inapplicable and is exempt to the extent that these systems of records are exempt from subsection (d) of the Act.

(3) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him or her, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting access to records

in these systems of records could inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, security-sensitive, or confidential business information and could constitute an unwarranted invasion of the personal privacy of others.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by Executive order of the President. The application of this provision could impair investigations and law enforcement, because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation, the investigator may obtain information which is incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation, the investigator may obtain information concerning the violation of laws other than those which are within the scope of his jurisdiction. In the interest of effective law enforcement, the EPA investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision could impair investigations and law enforcement by alerting the subject of an investigation of the existence of the investigation, enabling the subject to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, in certain circumstances, the subject of an investigation cannot be required to provide information to investigators, and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

(6) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purposes for which the information is intended to be used; of the routine uses which may be made of the information; and of the effects on the person, if any, of not providing all or any part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation, which could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise on undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(7) 5 U.S.C. 552a(e)(4) (G) and (H) require an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual at his request if the system of records contains a record pertaining to him or her, how to gain access to such a record, and how to contest its content. Since EPA is claiming that these systems of records are exempt from parts of subsection (f)(2) through (5) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable and are exempt to the extent that these systems of records are exempt from subsections (f) and (d) of the Act. Although EPA is claiming exemption from these requirements, the Agency has published such a notice concerning its notification, access, and contest procedures because, under certain circumstances, EPA might decide it is appropriate for an individual to have access to all or a portion of the individual's records in these systems of records.

(8) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Since the Act defines "maintain" to include the collection of information, complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In collecting information for criminal law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. Facts are first gathered and then placed into a logical order to prove or disprove objectively the criminal behavior of an individual. Material that may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as the investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigative report, thereby impeding effective law enforcement.

(9) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. Complying with this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(10) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby on an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him or her. Since EPA is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempt to the extent that these systems of records are exempt from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsection (f)(2) through (5) of the Act, EPA has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his records

in these systems of records. These procedures are described elsewhere in this Part.

(11) 5 U.S.C. 552a(g) provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections (d)(1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any other provision of the Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Since EPA is claiming that these systems of records are exempt from subsections (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8), and (f) of the Act, the provisions of subsection (g) of the Act are inapplicable and are exempt to the extent that these systems of records are exempt from those subsections of the Act.

(f) *Exempt records provided by another agency.* Individuals may not have access to records maintained by the EPA if such records were provided by another Federal agency which has determined by regulations that such records are subject to general exemption under 5 U.S.C. 552a(j). If an individual requests access to such exempt records, EPA will consult with the source agency.

(g) *Exempt records included in a nonexempt system of records.* All records obtained from a system of records that has been determined by regulations to be subject to general exemption under 5 U.S.C. 552a(j) retain their exempt status even if such records are also included in a system of records for which a general exemption has not been claimed.

§ 16.12 Specific exemptions.

(a) Exemption under 5 U.S.C. 552a(k)(2).

(1) *Systems of records affected.* EPA–17 OCEFT Criminal Investigative Index and Files.

EPA–21 External Compliance Program Discrimination Complaint Files.

EPA–30 OIG Hotline Allegation System.

EPA–40 Inspector General's Operation and Reporting (IGOR) System Investigative Files.

EPA–41 Inspector General's Operation and Reporting (IGOR) System Personnel Security Files.

EPA–46 OCEFT/NEIC Master Tracking System.

(2) *Authority.* Under 5 U.S.C. 552a(k)(2), the head of any Federal agency may by rule exempt any PA system of records within the agency from certain provisions of the Act, if the system of records is investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Act. However, if any individual is denied any right, privilege, or benefit that the individual would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of the material, the material must be provided, except to the extent that the disclosure would reveal the identity of a confidential source.

(3) *Qualification for exemption.* All of the affected PA systems of records contain investigatory material compiled for law enforcement purposes, material which is not within the scope of subsection (j)(2) of the Act.

(4) *Scope of exemption.*

(i) EPA systems of records 17, 30, 40, 41, and 46 are exempt from the following provisions of the PA, subject to the limitations set forth in 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3); (d); (e)(1), (4)(G) and (4)(H); and (f)(2) through (5). EPA system of records 21 is exempt from the following provisions of the PA, subject to the limitations set forth in 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(ii) An individual is "denied any right, privilege, or benefit that he or she would otherwise be entitled by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of such material," only if EPA actually uses the material in denying or proposing to deny such right, privilege, or benefit.

(iii) EPA–17 OCEFT Criminal Investigative Index and Files, EPA–40 Inspector General's Operation and Reporting (IGOR) System Investigative Files, and EPA–46 OCEFT/NEIC Master Tracking System are exempt under 5 U.S.C. 552a(j)(2) of the Act, and these systems are exempt under 5 U.S.C. 552a(k)(2) only to the extent that the (j)(2)of the Act exemption is held to be invalid.

(5) *Reasons for exemption.* EPA systems of records 17, 21, 30,40, 41, and 46 are exempt from the above provisions of the PA for the following reasons:

(i) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his or her request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(ii) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him or her, to request amendment of such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting access to records in these affected PA systems of records could inform the subject of an investigation of an actual or potential criminal violation, of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his or her activities, of the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, security-sensitive, or confidential business information and could constitute an unwarranted invasion of the personal privacy of others.

(iii) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by Executive order of the President. Maintaining records in this way could impair investigations and law enforcement efforts, because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. The relevance and necessity of maintaining information are often questions of judgment and timing, and it is only after that information is evaluated that its relevance and necessity can be established. In addition, during the course of an investigation, the investigator may obtain information which is incidental to the main purpose of the investigation but which may relate to matters under

the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of an investigation, the investigator may obtain information concerning the violation of laws other than those within the scope of the agency's jurisdiction. In the interest of effective law enforcement, EPA investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

(iv) 5 U.S.C. 552a(e)(4)(G) and (H) require an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual upon request if the system of records contains a record pertaining to him or her, how the individual can gain access to the record, and how to contest its content. Since EPA is claiming that these systems of records are exempt from subsection (f)(2) through (5) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable and are exempt to the extent that these systems of records are exempt from subsections (f) and (d) of the Act. Although EPA is claiming exemption from these requirements, EPA has published such a notice concerning its notification, access, and contest procedures because, under certain circumstances, EPA might decide it is appropriate for an individual to have access to all or a portion of his records in these systems of records.

(v) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his or her request if any system of records named by the individual contains a record pertaining to him or her. Since EPA is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempt to the extent that these systems of records are exempt from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsection (f)(2) through (5), EPA has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his records in these systems of records. These procedures are described elsewhere in this Part.

(b) *Exemption under 5 U.S.C. 552a(k)(5).*

(1) *Systems of records affected.* EPA 36 Research Grant, Cooperative Agreement, and Fellowship Application Files.

EPA 40 Inspector General's Operation and Reporting (IGOR) System Investigative Files.

EPA 41 Inspector General's Operation and Reporting (IGOR) System Personnel Security Files.

(2) *Authority.* Under 5 U.S.C. 552a(k)(5), the head of any agency may by rule exempt any system of records within the agency from certain provisions of the PA, if the system of records is investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity would be held in confidence.

(3) *Qualification for exemption.* These systems contain investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information.

(4) *Scope of exemption.*

(i) EPA 36 is exempt from 5 U.S.C. 552a(c)(3) and (d). EPA 40 and 41 are exempt from the following provisions of the PA, subject to the limitations of 5 U.S.C. 552a(k)(5); 5 U.S.C. 552a(c)(3); (d); (e)(1), (4)(H); and (f)(2) through (5).

(ii) To the extent that records in EPA 40 and 41 reveal a violation or potential violation of law, then an exemption under 5 U.S.C. 552a(k)(2) is also claimed for these records. EPA 40 is also exempt under 5 U.S.C. 552a(j)(2) of the Act.

(5) *Reasons for exemption.* EPA 36, 40, and 41 are exempt from the above provisions of the PA for the following reasons:

(i) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his or her request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Making such an accounting could cause the identity of a confidential source to be revealed, endangering the physical safety of the confidential source, and could impair the ability of the EPA to compile, in the future, investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information.

(ii) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him or her, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting such access could cause the identity of a confidential source to be revealed, endangering the physical safety of the confidential source, and could impair the ability of the EPA to compile, in the future, investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information.

(iii) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by Executive order of the President. The application of this provision could impair investigations, because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(iv) 5 U.S.C. 552a(e)(4)(H) requires an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual upon request how to gain access to any record pertaining to him or her and how to contest its content. Since EPA is claiming that these systems of records are exempt from subsections (f)(2) through (5) of the Act, concerning agency rules, and subsection (b) of the Act, concerning access to records, these requirements are inapplicable and are exempt to the extent that these systems of records are exempt from subsections (f)(2) through (5) and (d) of the Act. Although EPA is claiming exemption from these requirements, EPA has published such a notice concerning its access and contest procedures because, under certain circumstances, EPA might decide it is appropriate for an individual to have access to all or a portion of his records in these systems of records.

(v) 5 U.S.C. 552a(f)(2) through (5) require an agency to promulgate rules for obtaining access to records. Since EPA is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempt to the extent that this system of records is exempt from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsections (f)(2) through (5) of the Act, EPA has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his records in this system of records. These procedures are described elsewhere in this part.

(c) *Exemption under 5 U.S.C. 552a(k)(1).*

(1) *System of records affected.* EPA 41 Inspector General's Operation and Reporting (IGOR) System Personnel Security Files.

(2) *Authority.* Under 5 U.S.C. 552a(k)(1), the head of any agency may by rule exempt any system of records within the agency from certain provisions of the PA of 1974, if the system of records is subject to the provisions of 5 U.S.C. 552(b)(1). A system of records is subject to the provisions of 5 U.S.C. 552(b)(1) if it contains records that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

(3) *Qualification for Exemption.* EPA 41 may contain some records that bear a national defense/foreign policy classification of Confidential, Secret, or Top Secret.

(4) *Scope of exemption.* To the extent that EPA 41 contains records provided by other Federal agencies that are specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified by other Federal agencies pursuant to that Executive order, the system of records is exempt from the following provisions of the PA: 5 U.S.C. 552a(c)(3); (d); (e)(1), (4)(G) and (4)(H); and (f)(2) through (5).

(5) *Reasons for exemption.* EPA 41 is exempt from the above provisions of the PA for the following reasons:

(i) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Making such an accounting could result in the release of properly classified information, which would compromise the national defense or disrupt foreign policy.

(ii) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him or her, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting such access could cause the release of properly classified information, which would compromise the national defense or disrupt foreign policy.

(iii) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by Executive order of the President. The application of this provision could impair personnel security investigations which use properly classified information, because it is not always possible to know the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(iv) 5 U.S.C. 552a(e)(4) (G) and (H) require an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual upon request if the system of records contains a record pertaining to him or her, how to gain access to such a record, and how to contest its content. Since EPA is claiming that this system of records is exempt from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable and are exempt to the extent that this system of records is exempt from subsections (f) and (d) of the Act. Although EPA is claiming exemption from these requirements, EPA has published such a notice concerning its notification, access, and contest procedures because, under certain circumstances, EPA might decide it is appropriate for an individual to have access to all or a portion of his records in this system of records.

(v) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him or her. Since EPA is claiming that this system of records is exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f) (2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempt to the extent that this system of records is exempt from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsection (f) of the Act, EPA has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his or her records in this system of records. These procedures are described elsewhere in this part.

(d) *Exempt records provided by another Federal agency.* Individuals may not have access to records maintained by the EPA if such records were provided by another Federal agency which has determined by regulations that such records are subject to general exemption under 5 U.S.C. 552a(j) or specific exemption under 5 U.S.C. 552a(k). If an individual requests access to such exempt records, EPA will consult with the source agency.

(e) *Exempt records included in a nonexempt system of records.* All records obtained from a system of records which has been determined by regulations to be subject to specific exemption under 5 U.S.C. 552a(k) retain their exempt status even if such records are also included in a system of records for which a specific exemption has not been claimed.

[FR Doc. 04–20678 Filed 9–13–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–310–0465; FRL–7809–6]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District ("SCAQMD") portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen

(NO_X) and oxides of sulfur (SO_X) emissions from facilities emitting 4 tons or more per year of NO_X and/or SO_X under the SCAQMD Regional Clean Air Incentives Market ("RECLAIM"). We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 14, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect copies of the submitted SIP revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Dr., Diamond Bar, CA 91765–4182.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Andy Steckel, EPA Region IX, (415)947–4115, *steckel.andrew@epa.gov.*

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

Table of Contents

I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by SCAQMD and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	2015	Backstop provisions	06/04/04	07/29/04

On August 10, 2004, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rule 2015 into the SIP on September 9, 2003.

C. What Is the Purpose of the Submitted Rule Revisions?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. The RECLAIM program sets an emissions cap and declining balance for many of the largest NO_X and SOx facilities in the South Coast Air Basin. The program was designed to provide additional incentives for industry to reduce emissions and advance pollution control technologies. During our review of previously submitted versions of the RECLAIM program rules, EPA raised concerns regarding provisions that allowed facilities, under certain conditions, to not deduct excess emissions associated with equipment breakdowns from the facility's RECLAIM Trading Credit ("RTC") Allocation. EPA notified SCAQMD that these provisions conflicted with the Clean Air Act as interpreted by a September 20, 1999 EPA policy that, where possible, requires mitigation of all excess emissions during equipment malfunctions, startup, and shutdown.

SCAQMD staff committed in a letter dated April 2, 2002 to address the issue of breakdown emissions under the RECLAIM program. On May 13, 2002, EPA proposed conditional approval of the May 2001 RECLAIM amendments into the SIP (67 FR 31998). The conditional approval was finalized on September 4, 2003 (68 FR 52512). Specifically, the conditional approval required that SCAQMD adopt amendments to RECLAIM which would establish a mechanism within the RECLAIM program to ensure mitigation of all excess emissions resulting from breakdowns. The commitment made in the April 2nd letter stipulated that SCAQMD would monitor and track excess emissions from breakdowns and compare the total amount of these excess emissions to unused RTCs each year for the entire RECLAIM program. If the yearly breakdown emissions from all RECLAIM sources exceeded the unused RTCs, programmatic reductions from RECLAIM allocations in the following year would be made to mitigate the excess emissions. The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The SCAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so the RECLAIM program must fulfill RACT.

Guidance and policy documents that we used to help evaluate enforceability and RACT requirements consistently include the following:

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement), 57 FR 55620, November 25, 1992.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. Requirements applicable to emissions trading programs such as RECLAIM are contained in "Improving Air Quality with Economic Incentive Programs," January 2001, Office of Air and Radiation, EPA–452/R–01–001 ("EIP Guidance"). This guidance applies to discretionary economic incentive programs ("EIPs") and represents the

agency's interpretation of what EIPs should contain in order to meet the requirements of the CAA. Because this guidance is non-binding and does not represent final agency action, EPA is using the guidance as an initial screen to determine whether approvability issues arise.

5. Excess emissions provisions are addressed by "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup and Shutdown," EPA's Office of Air and Radiation and Office of Enforcement and Compliance Assurance, September 20, 1999 ("Excess Emissions Policy").

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the CAA as applied by relevant policy and guidance regarding emissions trading programs, excess emissions provisions, enforceability, RACT, and SIP relaxations. Specifically, the submitted rule amendments were found to fulfill the requirements of EPA's previous conditional approval of the RECLAIM program rules and to address all concerns raised therein with respect to our Excess Emissions Policy. The TSD has more information on our evaluation.

C. Public Comment and Final Action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: August 17, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 04–20682 Filed 9–13–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No 040804229–4229–01; I.D. 080204G]

RIN 0648–AS34

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 40–A

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Framework Adjustment 40–A (FW 40–A) to the NE Multispecies Fishery Management Plan (FMP). FW 40–A was developed by the New England Fishery Management Council (Council) toprovide additional opportunities for vessels in the fishery totarget relatively healthy stocks of groundfish in order tomitigate the economic and social impacts resulting from the effort reductions required by Amendment 13 to the FMP, and toharvest groundfish stocks at levels that approach optimum yield (OY). The proposed action would create three programs toallow vessels touse Category B Days-at-Sea (DAS) (both Regular and Reserve) totarget healthy stocks: Regular B DAS Pilot Program; Closed Area (CA) I Hook Gear Haddock Special Access Program (SAP); and Eastern U.S./Canada Haddock SAP Pilot Program. In addition, FW 40–A proposes to relieve an Amendment 13 restriction that currently prohibits vessels from fishing both in the Western U.S./Canada Area, and outside that area on the same trip. The intended effect of FW40–A would be to provide fishing opportunities that would mitigate some of the negative economic and social impacts caused by the effort reductions in Amendment 13.

DATES: Comments must be received by September 29, 2004.

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

- E-mail: *FW40A@NOAA.gov*. Include in the subject line the following: "Comments on the Proposed Rule for Groundfish Framework 40–A".
- Federal e-Rulemaking Portal: *http:/www.regulations.gov*.
- Mail: Paper, disk, or CD–ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Proposed Rule for Groundfish Framework 40–A."
- Fax: (978) 281–9135.

Copies of FW 40–A, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery Mill 2, Newburyport, MA 01950.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285. NMFS prepared a summary of the IRFA, which is contained in the Classification section of the preamble of this proposed rule.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: (978) 281–9347, fax; (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The Council developed Amendment 13 to bring the FMP into compliance with all Magnuson-Stevens Act requirements, including ending overfishing and rebuilding all overfished groundfish stocks. Amendment 13 was partially approved by the Secretary of Commerce on March 18, 2004. A final rule implementing the approved measures was published April 27, 2004 (69 FR 22906), with most measures becoming effective May 1, 2004. Amendment 13 adopted a suite of management measures to reduce fishing mortality on groundfish stocks that are either overfished, or where overfishing is occurring. For several stocks, the fishing mortality targets adopted in Amendment 13 represented substantial reductions from previous levels. For other stocks, the fishing mortality targets were set at or above previous levels, and fishing mortality could remain the same or potentially increase without causing overfishing. Because most fishing trips in this fishery catch a wide range of species, and the principal management tool used in the FMP to reduce fishing effort is DAS, the reduction in DAS implemented by Amendment 13 impacts numerous species. It is difficult to design management measures that selectively change fishing mortality for individual species. Because the management measures in Amendment 13 were designed to reduce fishing mortality where necessary, they may also reduce fishing mortality more than is necessary for other, healthier stocks. As a result, yield from healthier stocks may have been sacrificed and the ability of the FMP to ensure OY from these stocks may be diminished. OY is the amount of fish that will provide the greatest overall benefit to the nation. FW 40–A proposes programs that would provide additional opportunities to target healthy groundfish stocks in order to maximize the ability to achieve OY. These programs would also mitigate some of the negative economic and social impacts caused by the effort reductions in Amendment 13.

Among the primary Amendment 13 management measures to control fishing mortality are DAS reductions. Amendment 13 categorized the DAS allocated to each permit as Category A, Category B DAS which are further categorized as Regular B, and Reserve B, orand Category C DAS. Category A DAS can be used to target any regulated groundfish stocks, while Category B DAS are to be used only to target healthy groundfish stocks. Category C DAS cannot be used at all at this time. The regulations implementing Amendment 13 include only one opportunity to use Category B DAS: A SAP designed to target Georges Bank (GB) yellowtail flounder in CA II. FW 40–A proposes additional opportunities to use Category B DAS. The Council understood at the time Amendment 13 was submitted, that additional means to allow use of Category B DAS would be explored and possibly implemented through the framework process in the FMP.

Proposed Measures

FW 40–A proposes three programs that would create additional opportunities to target healthier groundfish stocks. These are: The Regular B DAS Pilot Program, the CA I Hook Gear Haddock SAP, and the Eastern U.S./Canada Haddock SAP Pilot Program. In addition, FW 40–A would relieve the restrictions on the area that can be fished on the same trip by vessels fishing in the Western U.S./Canada Area. A description of the proposed management measures follows.

1. Regular B DAS Pilot Program

The proposed Regular B DAS program would create opportunities to use B Regular DAS outside of a SAP (and outside closed areas) to target stocks that can withstand additional fishing effort (Gulf of Maine (GOM) haddock, pollock, GOM winter flounder, GB haddock, GB yellowtail flounder, and GB winter flounder). In addition, the program would provide the Council with information that could be used to design future Regular B DAS programs. The pilot program is proposed to run for 1 year, from November 1, 2004, (or starting with the effective date of FW 40–A, if after November 1, 2004) through October 31, 2005. In order to limit the potential biological impacts of the program, only 1,000 B Regular DAS per quarter (November through January, February through April, May through July, and August through October) would be allocated for use for the entire pilot program. These DAS would not be allocated to individual vessels, but would be used by vessels on a first-come, first-served basis.

Vessels participating in this program would be required to be equipped with an approved Vessel Monitoring System (VMS). The vessel owner or operator would be required to notify the NMFS Observer Program at least 72 hours in advance of a trip in order to facilitate observer coverage. This notice would require reporting of the following information: The general area or areas that will be fished (GOM, GB, or Southern New England (SNE)), vessel name, contact name for coordination of observer deployment, telephone number of contact, date, time, and port of departure. Providing notice of the area that the vessel intends to fish would not restrict the vessel's activity to only that area on that trip, but would be used to plan observer coverage. Prior to departing on the trip, the vessel owner or operator would be required to notify NMFS via VMS that the vessel intends to participate in the Regular B DAS Pilot Program. There would be no specific area or gear requirements for participation, but vessels would not be allowed to fish on that trip in a SAP, in the Eastern U.S./Canada Area, or in a seasonal or year-round closed area, and would be required to comply with the gear requirements of the FMP. While fishing under a Regular B DAS in this

program, Regular B DAS would accrue at the rate of 1 DAS for each calendar day, or part of a calendar day, fished. For example, a vessel that left on a trip 1 hour before midnight on one day, and fished until 1 hour after midnight on the next calendar day, would be charged 48 hours of B Regular DAS. Vessels fishing in this program would be prohibited from discarding legal-sized regulated groundfish, and would be limited to landing 100 lb (45.4 kg) per DAS for each groundfish species of concern, with the exception of yellowtail flounder, which would have a landing limit of 25 lb (11.3 kg) per DAS. If a vessel harvests and brings on board legal-sized regulated groundfish in excess of the landing limits, the vessel operator would be required toretain the excess catch, and immediately notify NMFS via VMS in order to change its DAS category from a Regular B DAS to a Category A DAS ("DAS flip"). Although the Council proposed in FW 40–A that the DAS flip must occur at some time prior tothe vessel crossing the VMS demarcation line, NMFS is proposing that the DAS flip must occur immediately upon exceeding the landing limits in order to enhance the effectiveness and enforceability of this measure. Because the timing of notification of the DAS flip was not explicitly stated in FW 40–A, NMFS is highlighting this measure for comment. If a vessel flips from a Regular B DAS to a Category A DAS, it would be charged Category A DAS which would accrue to the nearest minute for the entire trip (i.e., not to the nearest day), and would be subject to the possession and landing restrictions that apply tothe fishery as a whole (i.e., not the Regular B DAS Pilot Program limits). In order toensure that a vessel would always have the ability to flip to a Category A DAS while fishing under a Regular B DAS (should it encounter a groundfish species of concern in an amount that exceeded the trip limit), the number of Regular B DAS that would be allowed to be used on a trip would be limited to the number of Category A DAS that the vessel has at the start of the trip. For example, if a vessel plans a trip under the Regular B DAS Pilot Program and has 5 Category A DAS available, the maximum number of Regular B DAS that the vessel could fish on that trip under the Regular B DAS Pilot Program would be 5.

NMFS would administer the 1,000 Regular B DAS maximum by monitoring the number of Regular B DAS accrued on trips that end under a Regular B DAS. Declaration of the trip through VMS would not serve to reserve a vessel's right to fish under a Regular B DAS. Once 1,000 Regular B DAS were used in a quarter, the Regular B DAS Pilot Program would end for that quarter.

In order to limit the potential impact on fishing mortality that the use of Category B DAS (Regular B DAS or Reserve B DAS) may have on groundfish stocks of concern, a quarterly Incidental Total Allowable Catch (TAC) would be set for the groundfish stocks of concern, as summarized in the following table:

PROPOSED INCIDENTAL TACS FOR B REGULAR DAS PILOT PROGRAM (MT)

Stocks of Concern	Nov 2004 to Jan 2005	Feb 2005 to Apr 2005	May 2005 to Jul 2005	Aug 2005 to Oct 2005
GOM cod	48.5	48.5	63.5	63.5
GB cod	19.75	19.75	24.25	24.25
Cape Cod/GOM yellowtail flounder	9	9	12.5	12.5
American plaice	92.5	92.5	90	90
white hake	38.5	38.5	38	38
Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder	17.5	17.5	49.5	49.5
SNE/MA winter flounder	71.5	71.5	89	89
witch flounder	129.5	129.5	175	175

With the exception of white hake, if the incidental TAC for any one of these species were caught during a quarter (landings plus discards), use of Regular B DAS in the pertinent stock area would be prohibited for the remainder of that quarter. Because several stocks of concern may be found in a given stock area, the closure of that stock area to the use of Regular B DAS would result in the prohibition of fishing under a Regular B DAS for any stock of concern in that stock area, even if there were TAC remaining for some of the stocks of concern for that quarter. All stock areas would reopen for the use of B Regular DAS at the beginning of the subsequent quarter. If the white hake incidental TAC were caught in a quarter, the possession of white hake would be prohibited when fishing under Regular B DAS in any stock area for the remainder of that quarter. White hake would be treated differently than the other stocks of concern because the stock area for white hake covers all the waters from GOM through SNE, and closure of its stock area to the use of Regular B DAS rather than prohibiting its possession, would unnecessarily curtail the Regular B DAS Pilot Program.

This proposed program would allow the use of Regular B DAS by vessels fishing for species managed under other fishery management plans that require the use of a groundfish DAS to fish for, such as monkfish.

Vessels fishing in the Regular B DAS Pilot Program would be required to report their catches of groundfish stocks of concern daily through VMS, including the amount of fish kept and discarded, by statistical area fished. Vessels fishing for species managed by other fishery management plans, and not landing groundfish would not be subject to this reporting requirement.

The Administrator, Northeast Region, NMFS (Regional Administrator) would have the authority to prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Pilot Program would undermine the achievement of the objectives of the FMP or the Regular B DAS Pilot Program, or if the level of observer coverage were insufficient to make such a projection.

2. CA I Hook Gear Haddock SAP

This SAP would allow vessels with a limited access or open access NE multispecies permit to target haddock using longline or tub trawl gear, when fishing under either a Category A or B DAS within a defined portion of CA I during the period October 1 - December 31. A haddock TAC of 1,000 mt would be specified, and the SAP would close to all participants when the Regional Administrator projects that the TAC (landings and discards) has been caught. In order to limit the fishing mortality that the use of a Category B DAS may have on GB cod, an incidental GB cod TAC for vessels fishing under a Category B DAS in this SAP would be set at 16

percent of the overall incidental catch TAC for GB cod, which would be 12.6 mt, 15.5 mt, and 20.3 mt for the 2004, 2005, and 2006 fishing years, respectively, based on current information. The percentages could be changed by a future management action, and the TACs would be recalculated in 2005, through the periodic adjustment process, to reflect the best available information. When the Regional Administrator projects that this incidental TAC has been caught, fishing in the SAP on a Category B DAS would no longer be allowed (for any participant). Vessels fishing on a trip in which they have declared into the Regular B DAS Pilot Program would be prohibited from fishing in this or any other SAP on the same trip.

In order to enable the NMFS Observer Program to administer the deployment of observers in the SAP, a vessel intending to participate in this SAP would be required to notify NMFS by September 1 (with the exception of the 2004 fishing year) of its intention to fish in the program. For the 2004 fishing year, vessels would be required to notify the NMFS Observer Program by a date set by the Regional Administrator. Should a final rule adopting Framework 40–A be issued, NE multispecies permit-holders would be notified of the deadline through a letter that would be sent after issuance of such rule. Notification by vessels intending to participate in this SAP would not have to include specific information about the date of any trip into the SAP; the intent is simply to require that vessels declare their intent to articipate in the SAP. This information is intended to provide the NMFS Observer Program with an estimate of the total number of vessels that intend to participate in the SAP. If a vessel does not notify the NMFS Observer Program of its intent to participate in the SAP by the required date, it would not be allowed to participate in the SAP during that fishing year. If the Regional Administrator, based upon this estimated participation level, determines that funding is inadequate for the necessary level of observer coverage for both the GB Cod Hook Sector (Sector). and non-Sector vessels, the Sector would pay the additional costs required todeploy adequate levels of observers on the Sector vessels participating in this SAP. Vessels would be required to notify the NMFS Observer Program by telephone at least 72 hours prior to eaving on a trip to the SAP, and would be required to provide the following information: Vessel name; contact name for coordination of observer deployment; telephone number of contact; and date, time and port of departure. All vessels participating in this SAP, including open access vessels, would be required to be equipped with an approved VMS. Vessels would be required to declare into the SAP program via VMS and specify the type of DAS that would be used, prior to leaving port on a trip into the SAP.

Vessels could use either a Category A or Category B (Regular or Reserve) DAS to participate in the SAP. If fishing on a Category A DAS, vessels could fish inside the SAP area and outside the SAP area on the same trip. Vessels fishing under a Category B DAS could not fish both inside and outside the SAP area on the same trip. Vessels fishing under a Category B DAS (and fishing only inside the SAP) would be exempt from the current limitation on the number of hooks fished. Specific requirements for the SAP would differ for Sector and non-Sector vessels. All non-Sector vessels would be required to report their catches (landings and discards) of haddock and groundfish stocks of concern daily via VMS. Limited access NE multispecies vessels that are not in the Sector would be limited to fishing a maximum of 4 DAS in the SAP on a single trip and would be subject to a cod possession limit of 500 lb (226.8 kg) per DAS, with a maximum of 2,000 lb (907.2 kg) per trip. This landing limit would apply for the entire trip for any vessel participating in the SAP, whether using a Category A or Category B DAS. There is no flipping provision proposed for this SAP (i.e., vessels may not switch from using Category B to Category A DAS on a trip). Vessels participating in the SAP that have a limited access Handgear A or open access Handgear B permit would be restricted to 300 lb (136.1 kg) of cod per trip and 75 lb (34.0 kg) of cod per trip, respectively. For species other than cod, all vessels would be required to comply with the possession and trip limit restrictions currently specified in the regulations.

Non-Sector vessels fishing both inside and outside of the SAP on the same trip (under a Category A DAS) would be restricted tothe gear limits that apply to the area outside the SAP, and would have to report the amount of haddock and groundfish stocks of concern caught (retained and discarded) when crossing the boundary into or out of the SAP area. Cod caught by a non-Sector vessel while fishing under a Category A DAS would not be counted against the incidental cod TAC. Cod catches while fishing under a Category B DAS would be counted against the incidental cod TAC.

Sector vessels that fish in the CA I Hook Gear Haddock SAP would not be allowed to fish outside the SAP area on the same trip. All cod caught by Sector-vessels would count against the Sector's cod TAC and, in accordance with the Sector's Operations Plan, such vessels would be prohibited from discarding legal-sized cod and would be able to fish an unlimited number of hooks. Daily catch reports for each Sector vessel fishing in the SAP could be submitted by the Sector manager, rather than by the vessel.

The Regional Administrator would have the authority to close the CA I Hook Gear Haddock Access Area for the duration of the season if the level of observer coverage is insufficient to project whether continuation of the SAP would undermine the achievement of the objectives of the FMP or the CA I Hook Gear Haddock SAP.

3. Eastern U.S./Canada Haddock SAP Pilot Program

The Eastern U.S./Canada Haddock SAP Pilot Program would allow limited access NE multispecies DAS vessels fishing with trawl gear that complies with the gear requirements of the Eastern U.S./Canada Area (haddock separator trawl or flounder net) to target haddock using a Category B DAS, from May 1 December 31, in a portion of the Eastern U.S./Canada Area, including the northern-most tip of CA II. Under Amendment 13 (50 CFR § 648.85(a)(3)(iii)), the Regional Administrator has the authority to modify the types of fishing gear allowed to be used in the Eastern U.S./Canada Area (to further reduce cod catch), which includes the area of the proposed SAP. The proposed pilot program would be in effect for 2 years from the date of implementation of the program. The SAP would close if the Regional Administrator projects that the haddock or cod TAC for the Eastern U.S./Canada Area has been caught (landings and discards). In order to limit the potential impact on fishing mortality that the use of Category B DAS may have on GB cod, an incidental GB cod incidental TAC would be specified that represents 34 percent of the overall incidental catch TAC for GB cod for fishing years 2004, 2005, and 2006 (27 mt, 33 mt, and 43 mt, respectively, based on current information). The percentages could be changed by a future management action, and the incidental TACs would be recalculated in 2005, through the periodic adjustment process to reflect the best information available. Participation in the SAP by vessels using a Category B DAS would be

prohibited when the incidental catch TAC is projected to have been caught.

The following measures proposed for this SAP would be the same as the current regulations governing the Eastern U.S./Canada Area: Vessels fishing in this SAP must have an approved VMS and would not be charged steaming time either to or from the Eastern U.S./Canada Area. Vessel owners or operators planning a trip into this SAP would be required to notify the NMFS Observer Program at least 72 hours prior to leaving on a trip into the SAP in order to facilitate observer coverage, and would be required to provide the following information to the Observer Program: Vessel name; contact name for coordination of observer deployment; telephone number of contact; and date, time, and port of departure. In addition, participating vessels would be required to declare into the SAP via VMS prior to departing on a trip into the SAP. Vessels would also be required to specify via VMS which areas within the Eastern U.S./Canada Area that they intend to fish in, and the type of DAS that would be used. Vessels would be allowed to transit through CA II in order to enable vessels full access to the Eastern U.S./Canada Area. Discarding of legal-sized cod while fishing under a Category B DAS would be prohibited, and the cod landing limit would be 1,000 lb (453.6 kg) per trip (Category A or B DAS), regardless of trip length. If a vessel fishing under a Category B DAS exceeded the cod landing limit, the owner or operator would be required to immediately notify NMFS via VMS and "flip" to a Category A DAS. Once a vessel flipped to a Category A DAS, the vessel would be required to comply with all landing restrictions that apply to Category A DAS. All vessels would be required to comply with the haddock possession limits in place at the time of the fishing trip, regardless of the type of DAS the vessel is fishing under. In order to ensure that while fishing under a Category B DAS the vessel would always have the potential flip to a Category A DAS (should it catch cod in an amount that exceeds the landing limit), the number of Category B DAS that it would be allowed to use on a trip would be limited to the number of Category A DAS that the vessel has at the start of the trip. For example, if a vessel plans a trip into the Eastern U.S./Canada Haddock SAP Pilot Program, and has 5 Category A DAS available, the maximum number of Category B DAS that it could fish under the Eastern U.S./Canada Haddock SAP Pilot Program would be 5.

FW 40–A would change the cod landing limit for the CA II Yellowtail Flounder SAP from 100 lb (45.4 kg)/DAS and 1,000 lb (454 kg)/trip, to 1,000 lb (454 kg)/trip, in order to make the cod possession limits in the Eastern U.S./Canada Haddock SAP Pilot Program the same as in the CA II Yellowtail Flounder SAP. Vessels fishing in the Eastern U.S./Canada Area could fish in any combination of areas within the Eastern U.S./Canada Area, provided the area(s) is open and the vessel abides by the most restrictive regulations of the areas fished. For example, a vessel could fish in both the Eastern U.S./Canada Haddock SAP Pilot SAPProgram, and in the portion of the Eastern U.S./Canada Area that is not within a SAP on the same trip, provided the vessel fishes under a Category A DAS.

The Regional Administrator would have the authority to close the Eastern U.S./Canada Haddock SAP Pilot Program for the duration of the season, if it is projected that continuation of the Eastern U.S./Canada Haddock SAP Pilot Program would undermine the achievement of the objectives of the FMP or the Eastern U.S./Canada Haddock SAP Pilot Program, or if the level of observer coverage is insufficient to make such a projection.

4. Combined Trips to the Western U.S./Canada Area

Current regulations restrict groundfish DAS vessels that have declared a trip and are fishing in the Western U.S./Canada Area from fishing in areas outside of that area during the same trip, in order to ensure that there is an accurate attribution of landings to the appropriate stock and facilitate enforcement of the regulations. FW 40–A proposes to provide more flexibility to vessels by allowing them to fish both inside and outside the Western U.S./Canada Area on the same trip, but not in the Eastern U.S./Canada Area. to address the concern of accurate attribution of landings to the appropriate stock, in addition to the current reporting requirements, vessels would be required to eport catches (landings and discards) of yellowtail flounder, by statistical area, when crossing into or out of the Western U.S./Canada Area, and to comply with the most restrictive landing limits associated with the areas fished during that trip. Vessels would be required to comply with all other Western U.S./Canada Area requirements for that trip.

Classification

At this time, NMFS has not determined that the framework adjustment that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be significant for the purposes of E.O.Executive Order 12866.

Pursuant to 5 USC 603 an IRFA has been prepared, which describes the economic impacts that this proposed rule, if adopted, would have on small entities. The proposed action would implement three new programs and modify the existing rules for vessels fishing in the Western U.S./Canada Management Area in order to provide additional economic opportunities. The three programs include restrictions that would limit the biological impacts of the proposed action in order to be consistent with the rebuilding plans and objectives of the FMP. Current regulations under the FMP allow the development of such programs, provided they are consistent with the FMP objectives.

The proposed alternative was compared to the No Action alternative and a single non-selected alternative for each of the three programs (non-selected Regular B DAS Pilot Program, non-selected CA I Hook Gear Haddock SAP, and non-selected CA II Haddock SAP Pilot Program). The No Action alternative is comprised of the management measures that were implemented by Amendment 13 on May 1, 2004. The non-selected Regular B DAS Pilot Program would implement measures for a shorter duration than the proposed program. The non-selected CA I Hook Gear Haddock SAP would be the same as the proposed SAP, with the exception that it would not require advance notice to the Observer Program. The non-selected CA II Haddock SAP Pilot Program would include a longer season, a more restrictive GB cod possession limit, and would not include a Category B DAS flipping requirement.

A full description of the reasons why this action is being considered is found in the preamble to this proposed rule, and in the Executive Summary and Section 3.2 of FW 40–A. There are no Federal rules that may duplicate, overlap, or conflict with the proposed rule.

Description of and Estimate of the Number of Small Entities to which the Proposed Rule would Apply

The proposed action would implement changes with the potential to affect any vessel holding a NE

multispecies limited access permit or an open access Handgear B permit (approximately 1,800 active vessels). It is very likely, however, that the proposed measures would impact substantially less than the to tal number of active permit holders, based upon historic and recent rates of participation in the fishery, and because the proposed programs are voluntary in nature, and have some associated regulatory and economic costs. Because the programs are voluntary, no small entity would be required to bear any additional regulatory or economic burden unless it chose to. It is likely that participating vessels would have reached a decision that the benefits of participating in the program would exceed the costs of participation.

Based upon the information in FW 40–A, approximately 118 or more vessels may participate in the Regular B DAS Pilot Program, 60 vessels may participate in the CA II Hook Gear Haddock SAP, and approximately 86 vessels may participate in the Eastern U.S./Canada Haddock SAP Pilot Program. Up to 236 vessels could choose to fish both inside and outside of the Western U.S./Canada Management Area on the same trip.

The Small Business Administration (SBA) size standard for small commercial fishing entities is $ 3.5 million in gross receipts and would apply to limited access permit holders and open access Handgear permits holders. Data analyzed for Amendment 13 indicated that the maximum gross receipts for any single commercial fishing vessel for the period 1998 to 2001 was $ 1.3 million. For this reason, each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All commercial fishing entities would fall under the SBA size standard for small commercial fishing entities, and there would be no disproportionate impacts between small and large entities.

Economic Impacts of Proposed Action

The proposed action would implement a B Regular DAS pilot program which would allow limited access NE multispecies vessels to target relatively healthy groundfish stocks, using Regular B DAS, thereby, relieving some economic constraints caused by the current regulations. A total of 1,000 Regular B DAS per calendar quarter would be allocated to the Regular B DAS Pilot Program, beginning November 1, 2004. Incidental TACs for eight groundfish stocks of concern would be set on a quarterly basis, and participating vessels would be required to use a VMS and report catches (both landings and discards) of the stocks of concern via the VMS on a daily basis. The economic impact of the program will depend on the types of fisheries defined by where, when, and how vessels decide to fish, and the resulting catch rates of groundfish stocks of concern. Examination of recorded trips taken in fishing year 2001 indicate that there are opportunities to fish in several different stock areas with low catches of stocks of concern. Average daily revenues from the GB trawl fishery are estimated to be at least $ 2,200. Revenue estimates range from a low of $ 688 (GOM trawl fishery) to a high of nearly $ 3,000 per day (GB trawl fishery). Although these estimates suggest the potential value of being able to use B Regular DAS, the actual economic gains may be very different if vessels pursue fisheries that were not identified in the analysis. In addition, even if these average revenues are accurate estimates, the full benefits from the Regular B DAS Pilot Program may not be realized for two reasons: (1) The incidental catch TACs may limit the duration of the program in each quarter by reducing or eliminating the opportunities to use Regular B DAS; and (2) the DAS flipping requirement may decrease trip profitability or negatively impact the availability of Category A DAS to be used by that vessel elsewhere.

The proposed action would implement the CA I Hook Gear Haddock SAP which would allow NE multispecies vessels fishing with hook gear the opportunity to access haddock in a portion of CA I from October through December. Approximately 50 Sector, and 10 non-Sector vessels may participate in this program. Based upon the proposed haddock TAC of 1,000 mt, and an average of 5,000 lb (2268 kg) of haddock kept per trip, approximately 441 trips could be taken into this SAP. At an average haddock price of $ 1.05 per lb, and average variable costs of $ 364 per day, the potential revenue from fishing in the SAP is $ 2.5 million, with a vessel profit of $ 1.5 million (after subtracting variable costs and crew share). Dividing this profit among 60 potential hook vessels results in a vessel profit of $ 25,729. If all participating vessels needed to purchase a VMS system at a cost of $ 3,995 installed, which is at the high end of the cost range for available VMS systems, the profit would be reduced to $ 22,829 per vessel. Regardless of the precise split of the potential harvest between Sector and non-Sector vessels, all participating hook vessels could benefit from an economic surplus.

The proposed action would also implement the CA II Haddock SAP Pilot Program, which would allow limited access groundfish vessels the opportunity to use Category B DAS to target haddock in a designated portion of the Eastern U.S./Canada Area. Most of the benefits would be limited to relatively large vessels, due to the offshore location of the SAP Pilot Program. Participating vessels would be subject to the existing requirements of the Eastern U.S./Canada Area, including the requirement to use either a haddock separator trawl or flounder net, and use of a VMS. Total revenue would be limited by the GB cod and haddock TACs already set for the Eastern U.S./Canada Management Area. The potential revenue of participating vessels under the proposed pilot program was calculated based upon historic landings compositions. The average estimated revenue per vessel is $ 32,095 per trip, and ranges from $ 22,571 to $ 34,586 per trip. Smaller vessels would generate less revenue than larger vessels. The average vessel revenue is estimated to be $ 4,527 per day, and ranges from $ 3,060 to $ 4,751 per day. These averages are higher than the average revenues on groundfish trips reported in the break-even analysis in Amendment 13; one can infer that the proposed SAP would provide vessels with greater opportunity to remain profitable.

The proposed action would also relax current restrictions in order to allow vessels to fish both inside and outside of the Western U.S./Canada Area on the same trip. Although Vessel Trip Report data indicate that fishing in multiple statistical areas is not a common occurrence, observer data and fisher's comments indicate that some vessels do fish in multiple statistical areas on the same trip. Based upon industry comments, this proposed regulatory change would reduce the risk of an unprofitable trip into the Western U.S./Canada Area.

The aggregate economic benefits of the opportunities proposed in FW 40–A would include revenue from harvest of the targeted stocks, as well as from harvest under the incidental TACs.

Economic Impacts of Alternatives tothe Proposed Action

The No Action alternative would provide no new opportunities for economic benefits above the current level. Under the No Action alternative, vessels would not be able to fish as many B DAS, or in currently closed areas, and would therefore forgo potential revenues. Selection of the No Action alternative would mean no

fishing opportunities under the Regular B DAS Pilot Program, and the loss of potential average revenues of $ 2,000 per day. Selection of the No Action alternative would mean no fishing opportunities under the Closed Area I Hook Gear Haddock SAP, and the loss of potential profits of $ 25,000 for each of approximately 60 participating vessels. Similarly, potential average revenue from the Eastern U.S./Canada Haddock SAP Pilot Program that would be unavailable under the No Action alternative is estimated to be $ 4,500 per day absent.

The non-selected Regular B DAS Pilot Program alternative would implement the program for only two calendar quarters and, therefore, would provide less economic benefits than the proposed Regular B DAS Pilot Program. Secondly, due to the shorter duration of the non-selected program, less information would be obtained for the potential development of a future program. The non-selected CA I Hook Gear Haddock SAP would not require advance notice to the Observer Program, and would therefore be less burdensome to small entities, but would also fail to account for the logistical needs of the Observer Program. The non-selected Eastern U.S./Canada Haddock SAP Pilot Program proposes a different season for the SAP, a more restrictive cod possession limit, and no DAS flipping requirement. Taken as a whole, the proposed action may provide greater opportunity to retain cod, and may meet the conservation objectives of the FMP more effectively by not allowing fishing in the SAP during months that are important for GB cod spawning.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

Reporting and Recordkeeping Requirements

The proposed measures in FW 40–A include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) VMS purchase and installation; (2) VMS proof of installation; (3) automated VMS polling of vessel position once per hour when fishing in the Regular B DAS Pilot Program; (4) revised automated VMS polling of vessel position twice per hour when fishing in the U.S./Canada Management Area or the Eastern U.S./Canada SAP Pilot Program; (5) automated VMS polling of vessel position twice per hour when fishing in the CA I Hookgear Haddock SAP; (6) SAP area and DAS use declaration via VMS prior to each trip into a SAP; (7) revised estimate of the area and DAS use declaration via VMS prior to each trip into the CA I Hookgear Haddock SAP; (8) DAS "flip" notification via VMS for the Regular B DAS Pilot Program; (9) DAS "flip" notification via VMS for the Eastern U.S./Canada Haddock SAP Pilot Program; (10) notice requirements for observer deployment prior to every trip into the Regular B DAS pilot program; (11) revised estimate of the notice requirements for observer deployment prior to every trip into the CA I Hookgear Haddock SAP; (12) daily electronic catch and discard reports of stocks of concern when fishing under the Regular B DAS pilot program; (13) daily electronic catch and discard reports of GB cod and GB haddock for vessels not participating in the GB Cod Hook Sector when fishing under the CA I Hookgear Haddock SAP; and (14) daily electronic catch and discard reports of GB yellowtail flounder when fishing on a combined trip into the Western U.S./Canada Area.

The measures proposed under FW 40–A would require vessels touse VMS. Costs not previously authorized under the Paperwork Reduction Act (PRA) involved with VMS operation include monthly operational costs associated with fees charged by the individual VMS vendor for satellite connection, as well as service and maintenance charges. The cost of the purchase and installation of VMS units to vessels participating in the NE multispecies fishery were considered and approved in a previous PRA submission. NMFS has currently certified two vendors to provide VMS services. A conservative cost estimate, based on operational charges for the Boatracs VMS vendor, is approximately $ 100 per month for each NE multispecies vessel. Therefore, the yearly operational costs, per vessel, for VMS usage under the proposed provisions in FW 40–A are $1,200. This represents the only compliance costs associated with this action.

Public Reporting Burden

This proposed rule contains collection of information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden for these collections of information are estimated toaverage as follows:

1. VMS purchase and installation, OMB# 0648–0202 (1 hr/response);

2. VMS proof of installation, OMB# 0648–0202 (5 min/response);

3. Automated VMS polling of vessel position once per hour when fishing in the Regular B DAS pilot program, OMB# 0648–0202 (5 sec/response);

4. Revised automated VMS polling of vessel position twice per hour when fishing in the U.S./Canada Management Area or the Eastern U.S./Canada Haddock SAP Pilot Program OMB# 0648–0202 (5 sec/response);

5. Revised automated VMS polling of vessel position twice per hour when fishing in the CA I Hookgear Haddock SAP, OMB# 0648–0202 (5 sec/response);

6. SAP area and DAS use declaration via VMS prior to each trip into a SAP, OMB# 0648–0202 (5 min/response);

7. Revised estimate of the area and DAS use declaration via VMS prior to each trip into the CA I Hookgear Haddock SAP, OMB# 0648–0202 (5 min/response);

8. DAS "flip" notification via VMS for the Regular B DAS pilot program, OMB# 0648–0202 (5 min/response);

9. DAS "flip" notification via VMS for the CA II Haddock SAP, OMB# 0648–0202 (5 min/response);

10. Notice requirements for observer deployment prior to every trip into the Regular B DAS Pilot Program OMB# 0648–0202, (2 min/response);

11. Revised estimate of the notice requirements for observer deployment prior to every trip into the CA I Hookgear Haddock SAP, OMB# 0648–0202 (2 min/response);

12. Daily electronic catch and discard reports of stocks of concern when fishing under the Regular B DAS Pilot Program OMB# 0648–0212, (0.25 hr/response);

13. Daily electronic catch and discard reports of GB cod and GB haddock for vessels not participating in the GB Cod Hook Sector when fishing under the CA I Hookgear Haddock SAP, OMB# 0648–0212 (0.25 hr/response); and

14. Daily electronic catch and discard reports of GB yellowtail flounder when fishing on a combined trip into the Western U.S./Canada Area, OMB# 0648–0212 (0.25 hr/response).

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of collection of information,

including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 8, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, new definitions for "DAS flip" and "Incidental Total Allowable Catch (TAC)" are added in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

DAS flip, with respect to the NE multispecies fishery, means ending fishing under a Regular B DAS and begining fishing under a Category A DAS.

* * * * *

Incidental Total Allowable Catch (TAC), with respect to the NE multispecies fishery, means the total amount of catch (both kept and discarded) of a regulated groundfish stock of concern that can be taken by vessels fishing under Category B DAS.

* * * * *

3. In § 648.9, paragraph (c)(1)(ii) is revised to read as follows:

§ 648.9 VMS requirements.

* * * * *

(c) * * *

(1) * * *

(ii) At least twice per hour, 24 hours a day, for all NE multispecies DAS vessels that elect to fish with a VMS specified in § 648.10(b) or that are required to fish with a VMS as specified in § 648.85(a), for each groundfish DAS trip that the vessel has elected to fish in the U.S./Canada Management Areas, and as specified in § 648.85(a)(1), for each groundfish trip that the vessel has elected to fish in the CA I Hook Gear Haddock SAP.

* * * * *

4. In § 648.10, paragraphs (b)(1)(vi) and (vii) are added, and paragraph (b)(3)(i) is revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) * * *

(1) * * *

(vi) A vessel electing to fish under the Regular B DAS Pilot Program, as specified in § 648.85(b)(6).

(vii) A vessel electing to fish in the CA I Hook Gear Haddock SAP, as specified in § 648.85(b)(7).

* * * * *

(3) * * *

(i) A vessel issued a limited access NE multispecies, monkfish, occasional scallop, or Combination permit must use the call-in system specified in paragraph (c) of this section, unless the owner of such vessel has elected to one or more of the following activities:

(A) Provide the notifications required by this paragraph (b), through VMS as specified under paragraph (b)(3)(iii) of this section; or

(B) Fish in the Eastern U.S./Canada Area or Western U.S./Canada Area as described in § 648.85(a)(2)(i); or

(C) Fish under the Regular B DAS Pilot Program specified at § 648.85(a)(6); or

(D) Fish in the CA I Hook Gear Haddock SAP specified in § 648.85(a)(7).

* * * * *

5. In § 648.14, paragraphs (a)(39), (a)(104), (a)(130), and (a)(142)–(152), and paragraphs (c)(8) and (c)(50) are revised; and paragraphs (c)(51)–(c)(78) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided in § 648.81(b)(2) and (i).

* * * * *

(104) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a) through (f), unless otherwise specified in § 648.81(c)(2)(iii), (f)(2)(i), (f)(2)(iii), or as authorized under § 648.85.

* * * * *

(130) If declared into one of the areas specified in § 648.85(a)(1), fish during that same trip outside of the declared area, unless in compliance with the restrictions under § 648.85(a)(3)(ii), or enter or exit the declared area more than once per trip.

* * * * *

(142) If the vessel has been issued a limited access NE multispecies DAS permit and is in the area specified in § 648.85(b)(8)(ii), fail to comply with the VMS requirements in § 648.85(b)(8)(v)(B).

(143) If fishing under a NE multispecies DAS, enter or fish in the Eastern U.S./Canada Haddock SAP Pilot Program Area specified in § 648.85(b)(8)(ii), unless declared into the area in accordance with § 648.85(b)(8)(v)(D).

(144) Enter or fish in the Eastern U.S./Canada Haddock SAP Pilot Program outside of the season specified in § 648.85(b)(8)(iv).

(145) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP Pilot Program, exceed the possession limits specified in § 648.85(b)(8)(v)(H).

(146) If fishing under the Eastern U.S./Canada Haddock SAP Pilot Program, fish for, harvest, possess or land any regulated NE multispecies from the area specified in § 648.85(b)(8)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(8)(v)(A) through (G).

(147) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1), both outside and inside of the areas specified for a SAP under § 648.85(b)(3) and (8), fail to abide by the DAS and possession restrictions under § 648.85(b)(8)(v)(A)(2) through (4).

(148) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP Area specified in § 648.85(b)(8)(ii), during the season specified in § 648.85(b)(8)(iv), fail to comply with the restrictions specified in § 648.85(b)(8)(v).

(149) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), and not in a SAP specified in § 648.85(b) on the same trip, fail to comply with the requirements specified in § 648.85(a)(3).

(150) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), and in one of the SAPs specified in § 648.85(b)(3) or (8), fail to comply with the no discard and DAS flip provisions specified in § 648.85(b)(8)(v)(I) or the minimum Category A DAS requirement specified in § 648.85(b)(8)(v)(J).

(151) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), fail to comply with the reporting requirements specified in § 648.85(b)(8)(v)(G).

(152) If fishing under the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), fail to comply with the observer notification requirements specified in § 648.85(b)(8)(v)(C).

* * * * *

(c) * * *

(8) Fail to comply with the restrictions on fishing and gear specified in § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v), and (c)(2)(iv) if the vessel has been issued a limited access NE multispecies permit and fishes with hook-gear in areas specified in § 648.80(a), (b), or (c), unless allowed under § 648.85(b)(7)(iv)(F).

* * * * *

(50) Discard legal-sized regulated multispecies while fishing under a Regular B DAS in the Regular B DAS Pilot Program, as described in § 648.85(b)(6).

(51) If fishing under a Regular B DAS in the Regular B DAS Pilot Program, fail to comply with the DAS flip requirements of § 648.85(b)(6)(iv)(E) if the vessel harvests and brings on board more than the landing limit for a groundfish stock of concern specified in § 648.85(b)(6)(iv)(D).

(52) If declared to fish under a Regular B DAS in the Regular B DAS Pilot Program, fail to have the minimum number of Category A DAS available as required in § 648.85(b)(6)(iv)(F).

(53) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area, and other portions of the Eastern U.S./Canada Area on the same trip, fail to comply with the restrictions in § 648.85(b)(8)(v)(A).

(54) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area, discard legal-sized cod while fishing under a Category B DAS, as described in § 648.85(b)(8)(v)(I).

(55) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area under a Category B DAS, fail to comply with the DAS flip requirements of § 648.85(b)(8)(v)(I), if the vessel possesses more than the landing limit for cod specified in § 648.85(b)(8)(v)(F).

(56) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area under a Category B DAS, fail to have the minimum number of Category A DAS available as required under § 648.85(b)(8)(v)(J).

(57) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the requirements and restrictions specified in § 648.85(b)(6)(iv)(A) through (F), and (I).

(58) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the VMS requirement specified in § 648.85(b)(6)(iv)(A).

(59) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the observer notification requirement specified in § 648.85(b)(6)(iv)(B).

(60) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the VMS declaration requirement specified in § 648.85(b)(6)(iv)(C).

(61) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the landing limits specified in § 648.85(b)(6)(iv)(D).

(62) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the no discard and DAS flip requirements specified in § 648.85(b)(6)(iv)(E).

(63) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the minimum Category A DAS and Category B DAS accrual requirements specified in § 648.85(b)(6)(iv)(F).

(64) Use a Regular B DAS in the Regular B DAS Pilot Program specified in § 648.85(b)(6), if the program has been closed as specified in § 648.85(b)(6)(iv)(H) or (b)(6)(vi).

(65) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), use a Regular B DAS in a stock area that has been closed, as specified in § 648.85(b)(6)(iv)(G).

(66) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the reporting requirements specified in § 648.85(b)(6)(iv)(I).

(67) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the requirements and conditions specified in § 648.85(b)(7)(iv)(A) through (H).

(68) If fishing in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), fail to comply with the requirements and conditions specified in § 648.85(b)(7)(i) and (b)(7)(iv)(A) through (H).

(69) Fish in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), outside of the season specified in § 648.85(b)(7)(iii).

(70) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the DAS use restrictions specified in § 648.85(b)(7)(iv)(A).

(71) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS requirements specified in § 648.85(b)(7)(iv)(B).

(72) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the observer notification requirements specified in § 648.85(b)(7)(iv)(C).

(73) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS declaration requirement specified in § 648.85(b)(7)(iv)(E).

(74) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the gear restrictions specified in § 648.85(b)(7)(iv)(F).

(75) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the landing limits specified in § 648.85(b)(7)(iv)(G).

(76) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the reporting requirement specified in § 648.85(b)(7)(iv)(H).

(77) Fish in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), if that area is closed as specified in § 648.85(b)(7)(iv)(K) or (b)(7)(v).

(78) Fish in the U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), if the SAP Pilot Program is closed as specified in § 648.85(b)(8)(v)(K) or (L).

* * * * *

6. In § 648.81, paragraphs (b)(2)(iii), (b)(2)(iv) and (i) are revised to read as follows:

§ 648.81 NE multispecies closed areas and measures to protect EFH.

* * * * *

(b) * * *

(2) * * *

(iii) Fishing in the CA II Yellowtail Flounder SAP or the Eastern U.S./Canada Haddock SAP Pilot Program as specified in § 648.85(b)(3) and (8), respectively; or

(iv) Transiting the area, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b); and

(A) The operator has determined, and a preponderance of available evidence indicates, that there is a compelling safety reason; or

(B) The vessel has declared into the Eastern U.S./Canada Area as specified in § 648.85(a)(3)(ii) and is transiting CA II in accordance with the provisions of § 648.85(a)(3)(vii).

* * * * *

(i) *Transiting.* A vessel may transit CA I, the Nantucket Lightship Closed Area, the Cashes Ledge Closed Area, the Western GOM Closure Area, the GOM Rolling Closure Areas, the GB Seasonal

Closure Area, and the EFH Closure Areas, as defined in paragraphs (a)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), and (h)(1), respectively, of this section, unless otherwise restricted, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel may transit CA II, as defined in paragraph (b)(2) of this section, in accordance with paragraph (b)(2)(iv) of this section.

* * * * *

7. In § 648.82, paragraphs (d)(2)(i)(A) and (j)(1)(iii) are revised, and paragraph (e)(3) is added to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(d) * * *

(2) * * *

(i) * * *

(A) *Restrictions on use.* Regular B DAS can only be used by NE multispecies vessels in an approved SAP or in the Regular B DAS Pilot Program as specified in § 648.85(a)(6). Vessels may not fish under both a Regular B DAS and a Reserve B DAS on the same trip. Vessels that are required by another fishery management plan (i.e., not the NE multispecies FMP) to utilize a multispecies DAS, as specified under § 648.92(b)(2), may elect to use a Category B DAS to satisfy that requirement.

* * * * *

(e) * * *

(3) For vessels electing to fish in the Regular B DAS Pilot Program, as specified at § 648.85(a)(6), and that remain fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS used will accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day, fished. For example, a vessel that fished on one calendar day from 6 a.m. to 10 p.m. would be charged 24 hours of Regular B DAS, not 16 hours; a vessel that left on a trip 1 hour before midnight on the first calendar day and that fished until 1 hour after midnight of the next calendar day would be charged 48 hours of Regular B DAS because the fishing triop would have spanned 2 calendar days.

* * * * *

(j) * * *

(1) * * *

(iii) *Method of counting DAS.* Unless electing to fish in the Regular B DAS Pilot Program specified in § 648.85(a)(6), and therefore subject to the DAS accrual provisions of § 648.82(e)(3), Day gillnet vessels fishing with gillnet gear under a NE multispecies DAS will accrue 15 hours of DAS for each trip of more than 3 hours, but less than or equal to 15 hours. Such vessels will accrue actual DAS time at sea for trips less than or equal to 3 hours, or more than 15 hours.

* * * * *

8. In § 648.85, paragraphs (a)(3)(ii), (a)(3)(iv)(A), (a)(3)(v), and (b)(3)(viii) are revised; and paragraphs (a)(3)(iv)(C)(4), (a)(3)(v)(A) and (B), (a)(3)(vii), and (b)(5) through (b)(8) are added to read as follows:

§ 648.85 Special management programs.

* * * * *

(a) * * *

(3) * * *

(ii) *Declaration.* A NE multispecies DAS vessel that intends to fish in the U.S./Canada Management Area under a groundfish DAS must, prior to leaving the dock, declare the specific U.S./Canada Management Area described in paragraphs (a)(1)(i) or (ii) of this section, or the specific SAP, described in paragraph (b) of this section, within the U.S./Canada Management Area, through the VMS, in accordance with instructions to be provided by the Regional Administrator and comply with the restrictions and conditions in paragraphs (a)(3)(ii)(A) through (C) of this section. Vessels other than NE multispecies DAS vessels are not required todeclare into the U.S./Canada Areas.

(A) A vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may not fish, during the same trip, outside of the Eastern U.S./Canada Area, and may not enter or exit the Eastern U.S./Canada Area more than once on any trip.

(B) A vessel fishing under a NE multispecies DAS in the Western U.S./Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it does not enter or exit the area more than once on any trip, and complies with the possession restrictions specified in paragraph (a)(3)(iv)(C)(4) of this section, and the reporting requirements specified in § 648.85(a)(3)(v).

(C) For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Management Areas specified in paragraph (a)(1) of this section must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hr prior to the beginning of any trip that it declares into the U.S./Canada Management Area as required under this paragraph (a)(3)(ii).

* * * * *

(iv) * * *

(A) *Cod landing limit restrictions.* Notwithstanding other applicable possession and landing restrictions under this part, a NE multispecies vessel fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip, not to exceed 5 percent of the total catch on board, whichever is less, unless otherwise restricted under this part. A vessel fishing in both the Eastern U.S./Canada Area and either the CA II Yellowtail Flounder SAP or the Eastern U.S./Canada Haddock SAP Pilot Program on the same trip must comply with the cod possession restrictions for those programs, as specified in paragraphs (b)(3) and (8) of this section, respectively.

* * * * *

(C) * * *

(4) *Yellowtail flounder landing limit for vessels fishing both inside and outside the Western U.S./Canada Area on the same trip.* A vessel fishing both inside and outside of the Western U.S./Canada Area on the same trip, as allowed under paragraph (a)(3)(ii)(B) of this section, is subject to the most restrictive landing limits that apply to any of the areas fished.

* * * * *

(v) *Reporting.* The owner or operator of a NE multispecies DAS vessel must submit reports via the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into either of the U.S./Canada Management Areas. The reports must include at least the information specified in paragraphs (a)(3)(v)(A) and (B) of this section, depending on area fished. The reports must be submitted in 24–hr intervals for each day, beginning at 0000 hr and ending at 2400 hr, and must be submitted by 0900 hr of the following day.

(A) *Eastern U.S./Canada Area.* For a vessel declared into the Eastern U.S./Canada Area in accordance with paragraph (a)(3)(ii) of this section, the reports must include at least the following information: Total pounds of cod, haddock and yellowtail flounder kept; and total pounds of cod, haddock, and yellowtail flounder discarded.

(B) *Western U.S./Canada Area.* For a vessel declared into the Western U.S./Canada Area in accordance with paragraph (a)(3)(ii) of this section, the reports must include at least the following information: Total pounds of yellowtail flounder kept and total

pounds of yellowtail flounder discarded. In addition to these reporting requirements, a vessel that has declared that it intends to fish both inside and outside of the Western U.S./Canada Area on the same trip, in accordance with paragraph (a)(3)(ii) of this section, must report via VMS the following information when crossing the boundary into or out of the Western U.S./Canada Area: Total pounds of yellowtail flounder kept, by statistical area, and total pounds of yellowtail flounder discarded, by statistical area, since the last daily catch report.

* * * * *

(vii) *Transiting.* A multispecies DAS vessel declared into the Eastern U.S./Canada Area as defined in paragraph (a)(1)(ii) of this section, and not fishing in the CA II Yellowtail Flounder SAP described in paragraph (b)(3) of this section, may transit the CA II Yellowtail Flounder SAP as described in paragraph (b)(3)(ii) of this section, provided all fishing gear is stowed in accordance with the regulations at § 648.23(b).

(b) * * *

(3) * * *

(viii) *Trip limits.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, a vessel fishing in the CA II Yellowtail Flounder SAP may fish for, possess, and land up to 30,000 lb (13,608 kg) of yellowtail flounder per trip, and may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod per trip, regardless of trip length.

* * * * *

(5) *Incidental TACs.* Unless otherwise specified in this paragraph (b)(5), incidental TACs will be specified through the periodic adjustment process described in § 648.90, and allocated as described in paragraph (b)(5) of this section, for each of the following stocks: GOM cod, GB cod, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder. NMFS will send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod.* With the exception of GB cod, the incidental TACs specified under this paragraph (b)(5) shall be allocated to the Regular B DAS Pilot Program described in paragraph (b)(6) of this section.

(ii) *GB cod.* The incidental TAC for GB cod specified in this paragraph (b)(5), shall be subdivided as follows: 50 percent to the Regular B DAS Pilot Program, described in paragraph (b)(6) of this section; 16 percent to the CA I Hook Gear Haddock SAP, described in paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8) of this section.

(6) *B Regular DAS Pilot Program*—(i) *Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit and allocated Regular B DAS are eligible to participate in the Regular B DAS Pilot Program for the period specified in paragraph (b)(6)(ii) of this section, and may elect to fish under a Regular B DAS, provided they comply with the requirements and restrictions of this paragraph (b)(6), and provided the use of Regular B DAS is not restricted according toparagraphs (b)(6)(iv)(G) or (H), or paragraph (b)(6)(vi) of this section. Vessels are required tocomply with the no discarding and DAS flip requirements specified in paragraph (b)(6)(iv)(E) of this section, and the DAS balance and accrual requirements specified in paragraph (b)(6)(iv)(F) of this section. Vessels may not fish under the B Regular DAS Pilot program in the Eastern U.S./Canada Area.

(ii) *Duration of program.* Fishing under this program may only occur from November 1, 2004, through October 31, 2005.

(iii) *Quarterly incidental catch TACs.* The incidental catch TACs specified in accordance with paragraph (b)(5) of this section shall be divided into quarterly catch TACs.

(iv) *Program requirements*—(A) *VMS requirement.* A NE multispecies DAS vessel fishing in the Regular B DAS Pilot Program described in paragraph (b)(6)(i) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(B) *Observer notification.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and the planned fishing area or areas (GOM, GB, or SNE/MA) at least 72 hr prior to the beginning of any trip that it declares into the Regular B DAS Pilot Program as required under paragraph (b)(6)(iv)(C) of this section, and in accordance with instructions provided by the Regional Administrator.

(C) *VMS declaration.* Prior to departure from port, a vessel intending to participate in the Regular B DAS Pilot Program and to fish under a Regular B DAS must declare into the Program via the VMS, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Regular B DAS Pilot Program cannot fish in an approved SAP described under this section on the same trip.

(D) *Landing limits.* A NE multispecies vessel fishing in the Regular B DAS Pilot Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species: Cod, American plaice, white hake, witch flounder, ocean pout, winter flounder and windowpane flounder. Such vessels may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of yellowtail flounder, unless fishing the entire trip in the U.S./Canada Management Area as specified under paragraph (a) (1) of this section.

(E) *No-discard provision and DAS flips.* A vessel fishing in the Regular B DAS Pilot Program under a Regular B DAS may not discard legal-sized regulated groundfish. If such a vessel harvests and brings on board more legal sized regulated groundfish than the applicable maximum landing limit per trip specified under paragraph (b)(6)(iv)(D) of this section, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip. Once this notification has been received by NMFS, the vessel will automatically be switched by NMFS to fishing under a Category A DAS. For a vessel that notified NMFS of a DAS flip, the B DAS that have accrued between the time the vessel started accruing Regular B DAS at the beginning of the trip (i.e., at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Regular B DAS. Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized regulated groundfish n°longer applies. A vessel that has declared a DAS flip will be subject to the landing restrictions specified under § 648.86.

(F) *Minimum Category A DAS and B DAS accrual.* For a vessel fishing under the Regular B DAS Pilot Program, the number of Regular B DAS that can be used on a trip cannot exceed the number of Category A DAS the vessel has available at the start of the trip. The vessel will accrue DAS in accordance with § 648.82(e)(3).

(G) *Restrictions when 100 percent of the incidental catch TAC is harvested.* With the exception of white hake, when the Regional Administrator projects that 100 percent of one or more of incidental TACs specified under paragraph (b)(6)(iii) of this section has been

harvested, the use of Regular B DAS will be prohibited in the pertinent stock area(s) as defined under paragraph (b)(6)(v) of this section for the duration of the calendar quarter. The closure of a stock area to all Regular B DAS use will occur even if the incidental catch TACs for other stocks in that stock area have not been completely harvested. When the Regional Administrator projects that 100 percent of the white hake incidental catch TAC specified under paragraph (b)(6)(iii) of this section has been harvested, vessels fishing under a Regular B DAS, or that complete a trip under a Regular B DAS, will be prohibited from retaining white hake.

(H) *Closure of Regular B DAS program and quarterly DAS limit.* Unless otherwise closed as a result of the harvest of all incidental TACs as described in paragraph (b)(6)(iv)(G)of this section, or as result of an action by the Regional Administrator under paragraph (b)(6)(vi) of this section, the use of Regular B DAS will, through rulemaking consistent with the Administrative Procedure Act, be prohibited when 1,000 Regular B DAS have been used during the calendar quarter, in accordance with § 648.82(e)(3).

(I) *Reporting requirements.* The owner or operator of a NE multispecies DAS vessel must submit catch reports via VMS in accordance with instructions provided by the Regional Administrator, for each day fished when declared into the Regular B DAS Pilot Program. The reports must be submitted in 24–hr intervals for each day, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the following day. For vessels that have declared into the Regular B DAS Pilot Program in accordance with paragraph (b)(6)(iv)(C) of this section, the reports must include at least the following information: Statistical area fished, total weight (lb/kg) of cod, yellowtail flounder, American plaice, white hake, winter flounder, and witch flounder kept; and total weight (lb/kg) of cod, yellowtail flounder, American plaice, white hake, winter flounder, and witch flounder discarded.

(v) *Definition of incidental TAC stock areas.* For the purposes of the Regular B DAS Pilot Program, the species stock areas associated with the incidental TACs are defined in the following charts. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(A) *GOM cod stock area.* The GOM cod stock area is the area defined by straight lines connecting the following points in the order stated:

GULF OF MAINE COD STOCK AREA

Point	N. Lat.	W. Long.
GOM1	(1)	70° 00′
GOM2	42° 20′	70° 00′
GOM3	42° 20′	67° 40′
GOM4	43° 50′	67° 40′
GOM5	43° 50′	66° 50′
GOM6	44° 20′	66° 50′
GOM7	44° 20′	67° 00′
GOM8	(2)	67° 00′

(1) Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00′ W. Long.
(2) Intersection of the south-facing Maine coastline and 67° 00′ W. Long.

(B) *GB cod stock area.* The GB cod stock area is the area defined by straight lines connecting the following points in the order stated:

GEORGES BANK COD STOCK AREA

Point	N. Lat.	W. Long.
GB1	(1)	70° 00′
GB2	42° 20′	70° 00′
GB3	42° 20′	66° 00′
GB4	42° 10′	66° 00′
GB5	42° 10′	65° 50′
GB6	42° 00′	65° 50′
GB7	42° 00′	65° 40′
GB8	40° 30′	65° 40′
GB9	39° 00′	65° 40′
GB10	39° 00′	70° 00′
GB11	35° 00′	70° 00′
GB12	35° 00′	(2)

(1) Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00′ W. Long.
(2) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00′ N. Lat.

(C) *CC/GOM yellowtail flounder stock area.* The CC/GOM yellowtail flounder stock area is the area defined by straight lines connecting the following points in the order stated:

CAPE COD/GULF OF MAINE YELLOWTAIL FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
CCGOM1	(1)	70° 00′
CCGOM2	41° 20′	(2)
CCGOM3	41° 20′	69° 50′
CCGOM4	41° 10′	69° 50′
CCGOM5	41° 10′	69° 30′
CCGOM6	41° 00′	69° 30′
CCGOM7	41° 00′	68° 50′
CCGOM8	42° 20′	68° 50′
CCGOM9	42° 20′	67° 40′
CCGOM10	43° 50′	67° 40′
CCGOM11	43° 50′	66° 50′
CCGOM12	44° 20′	66° 50′
CCGOM13	44° 20′	67° 00′
CCGOM14	(3)	67° 00′

(1) Intersection of the south-facing coastline of Cape Cod, MA, and 70° 00′ W. Long.
(2) Intersection of the east-facing coastline of Nantucket, MA and 41° 20′ N. Lat. and 67° 00′ W. Long.
(3) Intersection of south-facing Maine coastline and 67° 00′ W. Long.

(D) *American plaice stock area.* The American plaice stock area is the area defined by straight lines connecting the following points in the order stated:

AMERICAN PLAICE STOCK AREA

Point	N. Lat.	W. Long.
AMP1	(1)	67°00′
AMP2	44° 20′	67° 00′
AMP3	44° 20′	66° 50′
AMP4	43° 50′	66° 50′
AMP5	43° 50′	67° 40′
AMP6	42° 30′	67° 40′
AMP7	42° 30′	66° 00′
AMP8	42° 10′	66° 00′
AMP9	42° 10′	65° 50′
AMP10	42° 00′	65° 50′
AMP11	42° 00′	65° 40′
AMP12	40° 30′	65° 40′
AMP13	39° 00′	65° 40′
AMP14	39° 00′	70° 00′
AMP15	35° 00′	70° 00′
AMP16	35° 00′	(2)

(1) Intersection of the south-facing Maine coastline and 67° 00′ W. Long.
(2) Intersection of the east-facing coastline of Outer Banks, NC and 35° 00′ N. Lat.

(E) *SNE/MA yellowtail flounder stock area.* The SNE/MA yellowtail flounder stock area is the area defined by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND/MID-ATLANTIC YELLOWTAIL FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
SNE1	35°00′	(1)
SNE2	35°00′	70°00′
SNE3	39°00′	70°00′
SNE4	39°00′	71°40′
SNE5	39°50′	71°40′
SNE6	39°50′	68°50′
SNE7	41°00′	68°50′
SNE8	41°00′	69°30′
SNE9	41°10′	69°30′
SNE10	41°10′	69°5′
SNE11	41°20′	69°50′
SNE12	(2)	70°00′
SNE13	(3)	70°00′
SNE14	(4)	70°00′

(1)Intersection of east-facing coastline of Outer Banks, NC, and 35°00′ N. Lat.
(2) Intersection of south-facing coastline of Nantucket, MA, and 70°00′ W. Long.
(3) Intersection of north-facing coastline of Nantucket, MA, and 70°00′ W. Long.
(4)Intersection of south-facing coastline of Cape Cod, MA, and 70°00′ W. Long.

(F) *SNE/MA winter flounder stock area.* The SNE/MA winter flounder stock area is the area defined by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND/MID-ATLANTIC WINTER FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
SNEW1	(1)	70°00′
SNEW2	42°20′	70°00′
SNEW3	42°20′	68°50′
SNEW4	39°50′	68°50′
SNEW5	39°50′	71°40′
SNEW6	39°50′	70°00′
SNEW7	35°00′	70°00′
SNEW8	35°00′	(2)

(1) Intersection of north-facing coastline of Cape Cod, MA, and 70° 00′ W. Long.
(2) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00′ N. Lat.

(G) *Witch flounder stock area.* The witch flounder stock area is the area defined by straight lines connecting the following points in the order stated:

WITCH FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
WF1	(1)	67°00′
WF2	44°20′	67°00′
WF3	44°20′	66°50′
WF4	43°50′	66°50′
WF5	43°50′	67°40′
WF6	42°20′	67°40′
WF7	42°20′	66°00′
WF8	42°10′	66°00′
WF9	42°10′	65°50′
WF10	42°00′	65°50′
WF11	42°00′	65°40′
WF12	40°30′	65°40′
WF13	40°30′	66°40′
WF14	39°50′	66°40′
WF15	39°50′	70°00′
WF16	(2)	70°00′
WF17	(3)	70°00′
WF18	(4)	70°00′

(1) Intersection of south-facing Maine coastline and 67°00′ W. Long.
(2) Intersection of south-facing coastline of Nantucket, MA, and 70°00′ W. Long.
(3) Intersection of north-facing coastline of Nantucket, MA, and 70°00′ W. Long.
(4) Intersection of south-facing coastline of Cape Cod, MA, and 70°00′ W. Long.

(vi) *Closure of the Regular B DAS Pilot Program.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other relevant information, may prohibit, through rulemaking consistent with the Administrative Procedure Act, the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Pilot Program would undermine the achievement of the objectives of the FMP or Regular B DAS Pilot Program, or if the level of observer coverage is insufficient to make such a projection.

(7) *CA I Hook Gear Haddock SAP—*

(i) *Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit, a limited access Handgear A permit, or an open access Handgear B permit are eligible to participate in the CA I Hook Gear Haddock SAP, and may fish in the CA I Hook Gear Haddock Access Area, as described in paragraph (b)(7)(ii) of this section, for the season specified in paragraph (b)(7)(iii) of this section, provided such vessels comply with the requirements of this section, and provided the SAP is not closed according to the provisions specified under paragraphs (b)(7)(iv)(K) or (b)(7)(v) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *CA I Hook Gear Haddock Access Area.* The CA I Hook Gear Haddock Access Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA I HOOK GEAR HADDOCK ACCESS AREA

Point	N. Lat.	W. Long.
Hook 1	41°25.6′	69°20.2′
Hook 2	41°29.2′	69°08.1′
Hook 3	41°08.5′	68°50.2′
Hook 4	41°06.4′	69°03.3′

(iii) *Season.* Eligible vessels may fish in the CA I Hook Gear Haddock SAP from October 1 through December 31.

(iv) *Program restrictions—*(A) *DAS use restrictions.* Vessels fishing in the CA I Hook Gear Haddock SAP may use Category A, Regular B or Reserve B DAS, in accordance with § 648.82(d)(2)(i)(A). A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. With the exception of vessels legally participating in the GB Cod Hook Sector, as authorized under § 648.87(d)(1), a vessel fishing in the CA I Hook Gear Haddock SAP, under either a Category A or Category B DAS, may fish a maximum of 4 DAS in the SAP per trip. A vessel fishing both inside and outside of the SAP on the same trip may only use a Category A DAS on such a trip, may only enter or exit the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(ii) of this section once per trip, and is subject to the gear and reporting requirements specified in paragraphs (b)(7)(iv)(F) and (H), respectively.

(B) *VMS requirement.* A NE multispecies DAS vessel fishing in the CA I Hook Gear Haddock SAP specified in this paragraph (b)(7) must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* With the exception of the 2004 fishing year, a vessel intending to participate in the CA I Hook Gear Haddock SAP must notify the NMFS Observer Program by telephone by September 1 of its intent to participate. This notification need not include specific information about the date of the trip. For the 2004 fishing year, a vessel must notify NMFS by a date set by the Regional Administrator. For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and date, time, and port of departure at least 72 hr prior to the beginning of any trip that it declares into the CA I Hook Gear Haddock SAP, as required in paragraph (b)(7)(iv)(B) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *Observer program funding.* The Regional Administrator may authorize the funding of observers by Sector vessels (for Sector vessels), consistent with applicable law, based upon the estimated participation level of vessels in the CA I Hook Gear Haddock SAP, if it is determined that the funding is inadequate to provide sufficient observer coverage for total number of vessels (both the non-Sector and GB Cod Hook Sector vessels).

(E) *VMS declaration.* Prior to departure from port, a vessel intending to participate in the CA I Hook Gear Haddock SAP must declare into the SAP via VMS, and provide information on the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish, and whether it intends to fish outside of the SAP on the same trip, in accordance with instructions provided by the Regional Administrator. A vessel declared into the CA I Hook Gear Haddock SAP cannot fish in another SAP specified under this section on the same trip.

(F) *Gear restrictions.* A vessel fishing exclusively in the CA I Hook Gear Haddock SAP is exempt from the maximum number of hook restriction specified in § 648.80(a)(4)(v). Unless otherwise exempted by a Sector letter of authorization, as described under § 648.87(c)(3), a vessel fishing both inside and outside of the SAP on the same trip is subject to the maximum number of hooks fished specified under § 648.80(a)(4)(v).

(G) *Landing limits.* Unless otherwise exempted by a Sector letter of authorization, as described under § 648.87(c)(3), a NE multispecies vessel fishing in the CA I Hook Gear Haddock Access Area described in paragraph

(b)(7)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 2,000 lb (4,403 kg) per trip.

(H) *Reporting requirements.* With the exception of vessels participating in the Sector, as described under § 648.87(d)(1), the owner or operator of a vessel declared into the CA I Hook Gear Haddock Area, as described in paragraph (b)(7)(ii) of this section, must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into the CA I Hook Gear Haddock Access Area. The reports must be submitted in 24–hr intervals for each day, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the following day. When such vessel fishes both inside and outside the Closed Area I Hook Gear Haddock Area on the same trip, as allowable under paragraph (b)(7)(iv)(A) of this section, the owner or operator must also submit a report when the vessel leaves or enters the area, as appropriate. The owner or operator of a vessel participating in the Sector, as described under § 648.87(d)(1), and declared into the CA I Hook Gear Haddock Area, must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished, when declared into the CA I Hook Gear Haddock Area. For all vessels that have declared into the CA I Hook Gear Haddock Access Area in accordance with paragraph (b)(7)(iv)(B) of this section, the reports must include at least the following information: Total weight (lb/kg) of cod and haddock kept, and total weight (lb/kg) of cod and haddock discarded.

(I) *Incidental cod TAC.* The maximum amount of GB cod (landings and discards) that may be harvested by non-Sector vessels from the CA I Hook Gear Haddock Access Area in a fishing year is the amount specified under paragraph (b)(5) of this section.

(J) *Haddock TAC.* The maximum amount of haddock (landings and discards) that may be harvested in a fishing year from the CA I Hook Gear Haddock Access Area by vessels fishing under a Category B DAS is 1,000 mt.

(K) *Mandatory closure of CA I Hook Gear Haddock Access Area.* When the Regional Administrator projects that the haddock TAC specified in paragraph (b)(7)(iv)(J) of this section has been caught by vessels fishing under Category B DAS, NMFS will close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock Access Area to all NE multispecies vessels. When the Regional Administrator projects that the incidental cod TAC specified in paragraph (b)(7)(iv)(I) of this section has been caught, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, prohibit the use of Category B DAS in the CA I Hook Gear Haddock Access Area.

(v) *General Closure of the CA I Hook Gear Haddock Access Area.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other information, may, through rule-making consistent with the Administrative Procedure Act, close the CA I Hook Gear Haddock Access Area for the duration of the season, if the level of observer coverage is insufficient to project whether continuation of the SAP will undermine the achievement of the objectives of the FMP or the CA I Hook Gear Haddock SAP.

(8) *Eastern U.S./Canada Haddock SAP Pilot Program*—(i) *Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit, and fishing with trawl gear, are eligible to participate in the Eastern U.S./Canada Haddock SAP Pilot Program, and may fish in the Eastern U.S./Canada Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the program duration and season specified in paragraphs (b)(8)(iii) and (iv) of this section, provided such vessels comply with the requirements of this section, and provided the SAP is not closed according to the provisions specified in paragraphs (b)(8)(v)(K) or (L) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *Eastern U.S./Canada Haddock SAP Area.* The Eastern U.S./Canada Haddock SAP Area is the area defined by straight lines connecting the following points in the order stated:

EASTERN U.S./CANADA HADDOCK SAP AREA

Point	N. Lat.	W. Long.
CAII3	42°22′	(1) 67°20′
SAP1	42°20′	67°20′
SAP2	42°20′	67°40′
SAP3	41°10′	67°40′
SAP4	41°10′	67°20′
SAP5	42°10′	67°20′
SAP6	42°10′	67°10′
CAII3	42°22′	(1) 67°20′

(1) U.S./Canada maritime boundary.

(iii) *Duration of program.* The Eastern U.S./Canada Haddock SAP Pilot Program is in effect from [date of implementation of FW 40–A] through [date 2 years from the date of implementation of FW 40–A].

(iv) *Season.* Eligible vessels may fish in the Eastern U.S./Canada Haddock SAP Pilot Program from May 1 through December 31.

(v) *Program restrictions*—(A) *DAS use restrictions.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program may elect to fish under a Category A, or Category B DAS, in accordance with § 648.82(d)(2)(i)(A) and the restrictions of this paragraph (b)(8)(v)(A).

(*1*) If fishing under a Category B DAS, a vessel is required to comply with the n°discarding and DAS flip requirements specified in paragraph (b)(8)(v)(I) of this section, and the minimum Category A DAS requirements of paragraph (b)(8)(v)(J) of this section.

(*2*) A vessel that is declared into the Eastern U.S./Canada Haddock SAP Pilot Area, described in paragraph (b)(8)(ii) of this section, may fish, on the same trip, in the Eastern U.S./Canada Haddock SAP Area and in the CA II Yellowtail Flounder Access Area, described in paragraph (b)(3)(ii) of this section, under either a Category A DAS or a Category B DAS.

(*3*) A vessel may choose, on the same trip, to fish in either/both the Eastern U.S./Canada Haddock SAP Area and the CA II Yellowtail Flounder Access Area, and in that portion of the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section that lies outside of these two SAPs provided the vessel fishes under a Category A DAS and abides by the VMS restrictions of paragraph (b)(8)(v)(D) of this section. The use of a Category A DAS is required because the use of Category B DAS is not allowed in that portion of the Eastern U.S./Canada Area that lies outside of SAPs.

(*4*) Vessels that elect to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must fish under the most restrictive trip provisions of any of the areas fished.

(B) *VMS requirement.* A NE multispecies DAS vessel fishing in the Eastern U.S./Canada Haddock SAP Area specified under paragraph (b)(8)(ii) of this section, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; areas to be fished; and date, time, and port of departure at least 72 hr prior to the beginning of any trip which it declares into the Eastern U.S./Canada Haddock SAP Area specified in

paragraph (b)(8)(ii) of this section, as required under paragraph (b)(8)(v)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *VMS declaration.* Prior to departure from port, a vessel intending to participate in the Eastern U.S./Canada Haddock SAP must declare into the SAP via VMS and provide information on the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish, and on the areas within the Eastern U.S./Canada Area that it intends to fish, in accordance with paragraph (b)(8)(v)(A) of this section and instructions provided by the Regional Administrator.

(E) *Gear restrictions.* A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program must use one of the haddock separator trawl nets or flounder trawl nets authorized for the Eastern U.S./Canada Area, as specified in paragraph (a)(3)(iii) of this section.

(F) *Landing limits.* A NE multispecies vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP Pilot Program may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod per trip, regardless of trip length. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program is subject to the haddock requirements described under § 648.86(a).

(G) *Reporting requirements.* The owner or operator of a vessel declared into the Eastern U.S./Canada Haddock SAP, as described in paragraph (b)(8) of this section, must submit reports in accordance with the reporting requirements described in paragraph (a)(3)(v) of this section.

(H) *Incidental cod TAC.* The maximum amount of GB cod (landings and discards) that may be caught from the Eastern U.S./Canada Haddock SAP Area in a fishing year, by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(v)(A) of this section, is the amount specified in paragraph (b)(5)(i)(B) of this section.

(I) *No discard provision and DAS flips.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program under a Category B DAS may not discard legal-sized cod. If a vessel fishing under a Category B DAS harvests and brings on board more legal-sized cod than the landing limit specified under paragraph (b)(8)(v)(F) of this section, the vessel operar must notify NMFS immediately via VMS to initiate a DAS flip to Category A DAS. Once this notification has been received by NMFS, the vessel will automatically be switched to fishing under a Category A DAS. For a vessel that notified NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS at the beginning of the trip (i.e., at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS. Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized cod n°longer applies. A vessel that has declared a DAS flip will be subject to the landing restrictions specified under § 648.86.

(J) *Minimum Category A DAS.* For vessels fishing under a Category B DAS, the number of Category B DAS that can be used on a trip cannot exceed the number of available Category A DAS the vessel has at the start of the trip.

(K) *Mandatory closure of Eastern U.S./Canada Haddock SAP Pilot Program.* When the Regional Administrator projects that the TAC allocation specified in paragraph (b)(8)(v)(H) of this section has been caught by vessels fishing under Category B DAS, the use of Category B DAS in the Eastern U.S./Canada Haddock SAP Pilot Program will be prohibited. In addition, the closure regulations described in paragraph (a)(3)(iv)(E) of this section shall apply to the Eastern U.S./Canada Haddock SAP Pilot Program.

(L) *General closure of the Eastern U.S./Canada Haddock SAP Area.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other information may, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Haddock SAP Area for the duration of the season, if it is projected that continuation of the Eastern U.S./Canada Haddock SAP Pilot Program would undermine the achievement of the objectives of the FMP or the Eastern U.S./Canada Haddock SAP Pilot Program, or if the level of observer coverage is insufficient to make such a projection.

[FR Doc. 04–20693 Filed 9–9–04; 3:26 pm]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 177
Tuesday, September 14, 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

Environmental Statements; Notice of Intent: Cancellation

AGENCY: Forest Service, USDA.

ACTION: Cancellation of Notice of Intent to prepare an environmental impact statement.

SUMMARY: An NOI was signed on January 5, 2001 by Jim Golden, Forest Supervisor, Coconino National Forest, regarding a proposed EIS for improving grassland and woodland vegetation conditions for wildlife, and manage livestock grazing use on the Pickett and Padre Canyon Grazing Allotments. The NOI for the EIS was published in the **Federal Register** January 18, 2001, page 4795.

After receiving comments and further analysis, the proposed action was adjusted to consider livestock grazing only and a new proposed action was signed August 10, 2001 indicating the environmental analysis was changing from an EIS to an EA and the Forest Service would pursue pinyon, juniper, and ponderosa pine treatments in separate NEPA analyses and decisions. Domestic livestock grazing and pinyon, juniper, and ponderosa pine treatments are dissimilar actions. Separating the two activities into different environmental analyses is more efficient, and focuses the environmental effects more clearly. The deciding official was also changed from the Forest Supervisor to the Mormon Lake District Ranger.

Terri Marceron, Mormon Lake District Ranger is the deciding official for the EA, will be signing the Decision Notice and Finding of No Significant Impact for the Pickett and Padre Canyon Allotments shortly.

FOR FURTHER INFORMATION CONTACT: To Terri Marceron, Mormon Lake District Ranger, Coconino National Forest, 4373 S Lake Mary Road, Flagstaff, Arizona, 86001, (928) 774–1147.

Dated: September 8, 2004.

Joseph P. Stringer,

Deputy Forest Supervisor.

[FR Doc. 04–20683 Filed 9–13–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Kuiu Timber Sale Environmental Impact Statement; Correction

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement; correction.

SUMMARY: The Department of Agriculture, Forest Service, published a document in the **Federal Register** August 18, 2004, concerning the notice of intent to prepare an Environmental Impact Statement on a proposal to harvest timber and to develop a road management plan for the Kuiu Timber Sale on north-central Kuiu Island, on the Petersburg Ranger District, Tongass National Forest. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Kris Rutledge, Team Leader at 907–772–3871.

Correction

In the **Federal Register** of August 18, 2004, in FR Doc. 04–18915, on page 51230, in the first column, correct the **DATES** caption to read:

DATES: An initial letter outlining the project timeline and public involvement opportunities was distributed during February 2004. A scoping letter will be mailed in the fall of 2004. Individuals who want to receive this mailing should contact the Petersburg Ranger District at the following address. The Draft Environmental Impact Statement is projected to be filed with the Environmental Protection Agency (EPA) in the winter of 2005 and will begin a 45-day public comment period. The Final Environmental Impact Statement and Record of Decision are scheduled to be published in the spring of 2005.

Dated: August 27, 2004.

Forrest Cole,

Forest Supervisor.

[FR Doc. 04–20669 Filed 9–13–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet September 17, 2004, (RAC) in Willits, California. Agenda items to be covered include: (1) Approval of minutes, (2) Public Comment, (3) Sub-committees (4) Discussion/Approval of projects (6) Matters before the group-discussion/action (9) Next agenda and meeting date.

DATES: The meeting will be held on September 17, from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo CA 95428. (707) 983–8503; E-MAIL *rhurt@fs.fed.us*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by September 13, 2004. Public comment will have the opportunity to address the committee at the meeting.

Dated: September 7, 2004.

Blaine Baker,

Designated Federal Official

[FR Doc. 04–20630 Filed 9–13–04; 8:45 am]

BILLING CODE 3410–11–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

TIME AND DATE: Thursday, September 23, 2004, at 7 p.m. local time.

PLACE: Kinston High School—Performing Arts Center, 2601 North Queen Street, Kinston, NC 28501—telephone: (252) 527–8067.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Chemical Safety and Hazard

Investigation Board (CSB) is convening this public meeting in connection with its investigation of an explosion and fire that occurred on January 29, 2003, at a plant owned by West Pharmaceutical Services, Inc. in Kinston, North Carolina.

At the meeting CSB staff will present to the Board the results of their investigation into this incident, including an analysis of the incident, a discussion of the key findings, root and contributing causes, and draft recommendations. The CSB staff presentation will focus on three key safety issues: hazard recognition and communication, good engineering practice, and amendments to fire codes.

After the staff presentations the Board will allow time for public comment. Following the conclusion of the comment period, the Board will consider whether to vote to approve the investigation report.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in the cases. Factual analyses, conclusions, or findings contained in the staff presentations should not be considered final. Only after the Board has considered the staff presentation and approved the staff report will it be a final Board product.

This meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least five (5) business days prior to the meeting.

CONTACT PERSON FOR MORE INFORMATION: Daniel Horowitz, (202) 261–7600.

Dated: September 9, 2004.

Christopher W. Warner,

General Counsel.

[FR Doc. 04–20739 Filed 9–9–04; 4:54 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposed Data Sharing Activity

AGENCY: Bureau of Economic Analysis, Department of Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of Economic Analysis (BEA) will provide to the Bureau of the Census (Census Bureau) for statistical purposes exclusively data collected in its surveys of foreign direct investment (FDI) in the United States. In accordance with the requirement of Section 524(d) of the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), we provided the opportunity for public comment on this data-sharing action (*see* the May 18, 2004 edition of the **Federal Register** (69 FR 28119)). The Census Bureau will link the FDI data, primarily those collected in the Benchmark Survey of Foreign Direct Investment in the United States—2002, to establishments in the Census Bureau's 2002 Economic Census and Business Register. Through the use of these shared data, the Census Bureau will augment and improve its establishment data on all U.S. businesses from the Economic Census by separately identifying data for the establishments of foreign-owned U.S. companies for specific detailed industries, and by identifying data quality issues arising from reporting differences in the Census Bureau and BEA surveys. The Census Bureau and BEA will publish non-confidential aggregate reports (public use) that have cleared BEA and Census Bureau disclosure review. Disclosure review is a process conducted to verify that the data to be released do not reveal any confidential information.

DATES: BEA will make the data collected from the Benchmark Survey of Foreign Direct Investment in the United States—2002 available to the Census Bureau on September 14, 2004.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on this program should be directed to Christopher Emond, Chief, Special Surveys Branch, International Investment Division, Bureau of Economic Analysis (BE–50), Washington, DC 20230, by phone on (202) 606–9826, by fax on 202–606–5318, or by e-mail at *christopher.emond@bea.gov*.

SUPPLEMENTARY INFORMATION:

Background

CIPSEA (Pub. L. 107–347, Title V) and the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 22 United States Code (U.S.C.) 3101–3108) allow BEA and the Census Bureau to share certain business data for exclusively statistical purposes. Section 524(d) of the CIPSEA requires a **Federal Register** notice announcing the intent to share data (allowing 60 days for public comment).

On May 18, 2004 (69 FR 28119), BEA published in the **Federal Register** a notice of this proposed data-sharing activity and request for comment on the subject. BEA did not receive any comments.

Shared Data

BEA will provide the Census Bureau with data collected from the FDI surveys. The agreement also calls for the Census Bureau to share data collected from the 2002 Economic Census and Business Register. The Census Bureau issued a separate notice addressing this issue (69 FR 39408, June 30, 2004).

BEA will provide the Census Bureau with only those data items necessary to link records from the FDI surveys with the establishments from the Business Register. The Census Bureau will use these data for statistical purposes exclusively. Through record linkage, the Census Bureau will augment and improve its establishment data on all U.S. businesses from the Economic Census by separately identifying data for the establishments of foreign-owned U.S. companies for specific detailed industries, and by identifying data quality issues arising from reporting differences in the Census Bureau and BEA surveys.

Statistical Purposes for the Shared Data

Information collected from the FDI surveys are used to estimate the financial and operating data, direct investment positions, and the international transactions of U.S. affiliates of foreign companies. Statistics from these surveys are published in articles in the Survey of Current Business and in separate data publications. All data are collected under sections 3101–3108, of Title 22 U.S.C.

Data Access and Confidentiality

Title 22, U.S.C. 3104 protects the confidentiality of these data. The data may be seen only by persons sworn to uphold the confidentiality of the information. Access to the shared data will be restricted to specifically authorized personnel and will be provided for statistical purposes only. The results of this project are subject to disclosure protection. All Census Bureau employees with access to these data will become BEA Special Sworn Employees—meaning that they, under penalty of law, must uphold the data's confidentiality. To further safeguard the confidentiality of the data, BEA has conducted an Information Technology security review of the Census Bureau.

Dated: September 7, 2004.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

[FR Doc. 04–20619 Filed 9–13–04; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 41–2004]

Foreign-Trade Zone 57—Charlotte, NC, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the North Carolina Department of Commerce, grantee of FTZ 57, requesting authority to expand its zone in the Charlotte, North Carolina, area, within the Charlotte Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 2, 2004.

FTZ 57 was approved on April 28, 1980 (Board Order 156, 45 FR 30466, 5/8/80) and expanded on September 23, 1982 (Board Order 199, 47 FR 43103, 9/30/82), and on July 29, 2002 (Board Order 1240, 67 FR 51535, 8/8/02).

The general-purpose zone project currently consists of 11 sites (2,094 acres) in the Counties of Mecklenburg, Burke, Caldwell, Alexander and Catawba: *Site 1* (100,000 sq. ft.)—11425 Granite Street in Mecklenburg County; *Site 1A* (23 acres)—1411 and 1701 Continental Boulevard, Mecklenburg County; *Site 2* (137,368 sq. ft.)—14620 Carowinds Boulevard, Mecklenburg County; *Site 3* (26 acres)—International Airport Center, 3401 International Airport Drive, Charlotte; *Site 4* (542 acres)—within the 1,600-acre Great Meadows Industrial Park located north of Interstate 40, west of Dysartville Road and south of U.S. Highway 70 in Burke County; *Site 5* (78 acres, 2 parcels) located on NC Highway 18 in Lenoir: Parcel 1 (40 acres)—Lenoir Business Park and Parcel 2 (38 acres)—J&M Industrial Park; *Site 6* (160 acres)—Alexander County Rail Park, located on NC Highway 90, one mile east of Taylorsville; *Site 7* (619 acres)—Hickory Regional Airport/Lakepark located on Clement Boulevard in Hickory; *Site 8* (1 acre)—Conwareco Logistics, Inc., warehouse facility, 1070 Main Avenue NW, Hickory; *Site 9* (4 acres)—Diamante Group LLC warehouse/industrial facility, 406 20th Street SE, Hickory; *Site 10* (330 acres)—within the 700-acre Conover West Business Park located south of Interstate 40 and north of U.S. Highway 70 in Hickory; and, *Site 11* (311 acres, 11 parcels)—City of Newton Industrial Park located between NC Highway 16 South and U.S. Highway 321 in Newton.

The applicant is now requesting authority to expand the general purpose zone to include four additional sites (243 acres) in Charlotte (Mecklenburg County): *Proposed Site 12* (85 acres)—Lakemont West Business Park located on Carowinds Boulevard; *Proposed Site 13* (12 acres)—West Logistics facility located at 2301 Nevada Boulevard; *Proposed Site 14* (90 acres)—West Pointe Business Park located on West Pointe Drive; and, *Proposed Site 15* (56 acres)—Ridge Creek Distribution Center located at the intersection of General Drive and Ridge Creek Drive. The sites are currently being utilized by a variety of tenants for warehousing, distribution and light manufacturing activities. Additional lots are available for build-to-suit and general warehouse facilities. The sites will provide public warehousing and distribution services to area businesses. The sites are owned by Lakemont Industrial Holding Company, CIVFI–NC1 B01 Cabot Properties, Inc., ProLogis Trust, and Childress Klein Properties. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building–Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is November 15, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 29, 2004).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 521 East Morehead Street, Suite 435, Charlotte, NC 28202.

Dated: September 3, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–20701 Filed 9–13–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms From India

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: September 14, 2004.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or David Goldberger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Ministerial Error

Pursuant to 19 CFR 351.224(e), the Department of Commerce (the Department) is amending the final results of the administrative review of the antidumping duty order on certain preserved mushrooms from India to reflect the correction of ministerial errors it made in the margin calculations for Premier Mushroom Farms (Premier) and Agro Dutch Industries, Ltd. (Agro Dutch). A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial. *See* 19 CFR 351.224(f). We are publishing this amendment to the final results pursuant to 19 CFR 351.224(e). As a result of this amended final results, we have revised the antidumping rates for Agro Dutch and Premier. *See* discussion below.

Ministerial Error Allegations

On August 20, 2004, the Department published its affirmative final results in this administrative review. *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 69 FR 51630 (Final Results).

On August 17, 2004, we disclosed our calculations for the final results to counsel for Premier and Agro Dutch and to counsel for the petitioner.

On August 24, 2004, Agro Dutch alleged that the Department made a ministerial error in calculating the margin for Premier. On August 26, 2004, the petitioner filed a reply to the Agro Dutch's ministerial error allegation, and also alleged certain additional ministerial errors in the preliminary and final results margin calculations for Premier.

The alleged ministerial errors are described below. Also *see* Memorandum to Louis Apple from The Team, dated September 2, 2004, for further discussion of the ministerial error allegations and the Department's analysis.

Agro Dutch

1. The Department inadvertently used outdated home market and U.S. sales databases in its final margin calculations for Premier. According to Agro Dutch, this error impacted the final margin calculations for Agro Dutch because the profit used to calculate constructed value (CV) for Agro Dutch was based in part on the profit rate of Premier.

Petitioner

1. The Department inadvertently used computer programs that predate the preliminary results for purposes of the final results with respect to Premier.
2. Instead of applying a revised financial expense ratio to the cost of manufacturing (COM), the Department added an absolute value to the COM in its cost of production and CV calculations for Premier.
3. The Department omitted the revised general and administrative expense ratio both from the preliminary and final results programming for Premier.

After analyzing the submissions cited above, we have determined that ministerial errors, within the meaning of 19 CFR 351.224(f), were made in the final results margin calculations for Premier, as discussed above. *See* Memorandum to Louis Apple from The Team, dated September 2, 2004, for further discussion of the ministerial error allegations and the Department's analysis. Therefore, we have recalculated the margin for Premier. The Department hereby amends its final results with respect to Premier to correct these errors. Because the corrections made to the Premier final results margin calculations caused Premier's weighted-average home market selling expenses and profit, which were used in part to calculate Agro Dutch's CV, to change, we have also amended the final margin calculations for Agro Dutch.

The collection of cash deposits will be revised accordingly and parties will be notified of this determination, in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Amended Final Results

As a result of our correction of ministerial errors in the Final Results, the revised weighted-average dumping margins are as follows:

Exporter/manufacturer	Original weighted-average margin percentage	Amended weighted-average margin percentage
Agro Dutch Industries, Ltd.	34.57	33.47
Premier Mushroom Farms	18.30	25.73

This determination is issued and published in accordance with sections 751 and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: September 7, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2189 Filed 9–13–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Softwood Lumber From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty changed circumstances review.

EFFECTIVE DATE: September 14, 2004.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Saliha Loucif, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0631 or (202) 482–1779, respectively.

SUMMARY: On May 11, 2004, the Department of Commerce (the Department) published a notice of initiation of changed circumstances review of the antidumping duty order on certain softwood lumber products from Canada. *See Initiation of Antidumping Duty Changed Circumstances Review: Certain Softwood Products From Canada, 69 FR 26072*, May 11, 2004 (*Initiation Notice*), to determine the appropriate cash deposit rate for the Canfor Corporation (Canfor), which merged with Slocan Forest Products Ltd. (Slocan) as of April 1, 2004. We have preliminarily determined that the post-merger Canfor is the successor-in-interest to both the pre-merger Canfor and Slocan. Therefore, we have preliminarily concluded that post-merger Canfor should be assigned a cash deposit rate reflecting a weighted-average of Canfor's and Slocan's respective cash deposit rates prior to the merger. Because Canfor and Slocan are both respondents in the ongoing first administrative review covering the period May 22, 2002, through April 30, 2003, we plan to align the final results of this changed circumstances review with the final results of the first administrative review for the purposes of establishing the final cash deposit rate for the post-merger Canfor. The final results of the first administrative review are due December 13, 2004.[1] Interested parties are invited to comment on these preliminary results.

SUPPLEMENTARY INFORMATION:

Background

On April 22, 2004, the Coalition for Fair Lumber Imports Executive Committee, the petitioner in this case, submitted a request that the Department initiate a changed circumstances review of the antidumping duty order on certain softwood lumber products from Canada pursuant to Section 751(b)(1) of the Trade Act of 1930, as amended ("the Act"), and 19 CFR 351.22 (c)(3)(ii) (2003). On May 11, 2004, the

[1] *See, Notice of Preliminary Results of Antidumping Duty Administrative Review and Postponement of Final Results: Certain Softwood Lumber Products From Canada* 69 FR 33235, 33236 (June 14, 2004).

Department published the *Initiation Notice* in the **Federal Register**. On June 23, 2004, the Department issued Canfor a questionnaire requesting further details on the merger of Canfor and Slocan. Canfor's response was received by the Department on July 7, 2004.

Scope of the Review

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Softwood lumber products excluded from the scope: Trusses and truss kits, properly classified under HTSUS 4418.90; I-joist beams; assembled box spring frames; pallets and pallet kits, properly classified under HTSUS 4415.20; garage doors; edge-glued wood, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40); properly classified complete door frames; properly classified complete window frames; and properly classified furniture.

Softwood lumber products excluded from the scope only if they meet certain requirements:

Stringers (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).

Box-spring frame kits: if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.

Radius-cut box-spring-frame components, not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

Fence pickets requiring no further processing and properly classified under HTSUS 4421.90.70, 1″ or less in actual thickness, up to 8″ wide, 6′ or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ inch or more.

U.S. origin lumber shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: (1) The processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and (2) if the importer establishes to U.S. Customs and Border Protections (CBPs) satisfaction that the lumber is of U.S. origin.

Softwood lumber products contained in single family home packages or kits,[2] regardless of tariff classification, are excluded from the scope of the orders if the following criteria are met:

(A) The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

(B) The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and if included in purchase contract decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

(C) Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

(D) The whole package must be imported under a single consolidated entry when permitted by CBP, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;

(E) The following documentation must be included with the entry documents:

A copy of the appropriate home design, plan, or blueprint matching the entry;

A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered; and,

In the case of multiple shipments on the same contract, all items listed immediately above which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are outside the scope of this order provided the specified conditions are met. Lumber products that CBP may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. Due to changes in the 2002 HTSUS whereby subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively, we are adding these subheadings as well.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non-

[2] To ensure administrability, we clarified the language of this exclusion to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

subject status based on U.S. country of origin will be treated as non-subject U.S.-origin merchandise under the antidumping and countervailing duty orders, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[3] The presumption of non-subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

Preliminary Results of the Review

In submissions to the Department dated April 29, 2004, and July 7, 2004,[4] Canfor advised the Department that Canfor and Slocan merged on April 1, 2004, through a share purchase arrangement in which Canfor purchased all issued and outstanding Slocan shares. *See* the *Combination Agreement*.[5] In submissions to the Department dated April 29, 2004, and July 7, 2004,[6] Canfor advised the Department that Canfor and Slocan merged on April 1, 2004, through a share purchase arrangement in which Canfor purchased all issued and outstanding Slocan shares. *See* the *Combination Agreement*.[7] The Amalgamation Application and Certificate of Amalgamation [8] demonstrate that Slocan and its subsidiaries have been amalgamated with Canfor's principal subsidiary, Canadian Forest Products Ltd., and consequently, that Slocan has ceased to exist as a separate corporate entity. The post-merger Canfor assumed all softwood lumber, flooring and siding industry operations formerly held by Slocan, in addition to continuing its own operations.

In antidumping duty changed circumstances reviews involving a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (*Canada Brass*). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor company if the resulting operations are essentially the same as those of the predecessor company. *See, e.g.*, Industrial Phosphoric Acid From Israel: Final Results of Changed Circumstances Review, 59 FR 6944, 6945 (February 14, 1994), and *Canada Brass*, 57 FR 20462. Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. See, *e.g.*, Fresh and Chilled Atlantic Salmon From Norway: Final Results of Changes Circumstances Antidumping Duty Administrative Review, 64 FR 9979, 9980 (March 1, 1999).

Based on our review of the Questionnaire Response, we preliminarily determine that post-merger Canfor is the successor-in-interest to both the pre-merger Canfor and Slocan. As a result of the merger, significant components of both pre-merger Canfor's and Slocan's management, production facilities, supplier relationships, and customer base have been incorporated into both the post-merger Canfor and Slocan.

As a result of the amalgamation, Canfor's management structure has been revised to incorporate former Slocan managers. The new Board of Directors of the post-merger Canfor was elected at a shareholders' meeting on April 30, 2004.[9] In accordance with the *Combination Agreement*,[10] Canfor's post-merger management team is composed of fifteen Directors, four of whom are Slocan nominees. Slocan's former Chief Executive Officer (CEO) is the President and CEO of the post-merger Canfor. In addition, Canfor's new executive team includes former Slocan managers as Vice-President of Human Resources, Vice-President of Wood Products (managing manufacturing facilities that were formerly with Slocan) and Vice-President of Finance. A number of senior managers with the pre-merger Canfor continue to hold managerial posts in the post-merger Canfor.[11] Thus, managers of both companies play important roles in senior management of the post-merger Canfor.

The transfer of Slocan's fixed assets to Canfor provides evidence of a dramatic increase in Canfor's production capacity.[12] As evidenced by their participation in both the investigation and administrative review in this case, both the pre-merger Canfor and Slocan were among the largest softwood lumber producers in Canada.[13] Prior to the merger, Canfor had eleven primary sawmills and one remanufacturing plant; Slocan had eight sawmills and one remanufacturing plant. Following the merger, the post-merger Canfor operates the combined nineteen sawmills and two remanufacturing plants.[14] While production from all the mills and remanufacturing plants is currently sold under the Canfor name, this includes a large quantity of lumber from mills which were formerly part of Slocan. Canfor reported that its post-merger products are the same as those produced by Canfor and Slocan prior to the merger.[15] Clearly, the post-merger Canfor currently produces a much larger quantity of and a wider range of products than could be produced by either Canfor or Slocan before the amalgamation.[16]

Further, the amalgamation of Slocan allowed Canfor to significantly increase its customer base. In addition to Canfor's own customers, former Slocan customers now purchase from the post-merger Canfor.[17] Likewise, suppliers that previously serviced Slocan continue to supply the post-merger Canfor.[18] Thus, the post-merger Canfor has noticeably increased the number of customers to whom it sells, and its list of suppliers is now more diversified.

Additionally, Canfor's sales process has undergone apparent adjustments. Slocan's sales employees have relocated into the post-merger Canfor's sales office site, which has led to a departmental restructuring. The majority of Slocan's former sales managers have kept their titles upon joining the post-merger Canfor; others have experienced minor

[3] *See* the scope clarification message (3034202), dated February 3, 2003, to CBP, regarding treatment of U.S.-origin lumber on file in the Central Records Unit, Room B–099 of the main Commerce Building.

[4] *See* letter from Canfor to the Department, dated April 29, 2004; *see also*, response of post-merger Canfor and Slocan's questionnaire response (*Questionnaire Response*) dated July 7, 2004.

[5] Questionnaire Response at Exhibit 1.

[6] *See* letter from Canfor to the Department, dated April 29, 2004; *see also*, response of post-merger Canfor and Slocan's questionnaire response (*Questionnaire Response*) dated July 7, 2004.

[7] Questionnaire Response at Exhibit 1.

[8] *Id.* at Exhibits 1 and 3.

[9] *Id.* at Exhibit 7.

[10] *Id.* at page 3.

[11] *Id.* at Exhibit 7.

[12] *Id.* at Exhibits 1 and 2.

[13] *See* Memo from Valerie Ellis and Christopher Smith to Bernard Carrea, Deputy Assistant Secretary, dated May 5, 2001, and Memo from Keith Nickerson and Amber Musser to Holly Kuga, dated Augist 1, 2003.

[14] *Id.* at page 4.

[15] *Id.* at page 4.

[16] *Id.* at page 4 and Exhibits 1, 2, and 6.

[17] *Id.* at page 5 and Exhibit 1.

[18] *Id.* at page 6 and Exhibit 1.

changes in responsibilities, but kept their employment. Ultimately, the post-merger Canfor's sales organization plans to maintain nearly all of Canfor and Slocan's combined number of sales employees. In sum, Canfor's amalgamation with Slocan has precipitated important changes to the corporate structures of both the pre-merger Canfor and Slocan, as it applies to the sales of the subject merchandise.

However, when as the result of a merger, the post-merger entity contains significant elements of both companies involved in the merger, we consider the post-merger entity to be a successor-in-interest to both of the pre-merger companies.[19] The post-merger Canfor's management, production facilities, supplier relationships, customer base and sales facilities combine important elements of both the pre-merger Canfor and Slocan.[20] Consequently, we preliminarily determine that the post-merger Canfor is the successor in interest to both the pre-merger Canfor and Slocan. Therefore, we have preliminarily concluded that the post-merger Canfor should be assigned a cash deposit rate reflecting a weighted-average of Canfor's and Slocan's respective cash deposit rates prior to the merger.

If the above preliminary results are affirmed in the Department's final results, the cash deposit rate from this changed circumstances review will apply to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. *See Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Changed Circumstances Review,* 68 FR 25327 (May 12, 2003). This deposit rate shall remain in effect until publication of the final results of the next administrative review in which Canfor participates.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. 19 CFR 351.309(c)(ii). Rebuttal briefs, which must be limited to issues raised in such briefs, be filed not later than 37 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Consistent with our alignment with the final results of the first administrative review, we will issue the final results of this changed circumstances review no later than December 13, 2004.

This notice is in accordance with sections 751(b) and 777(i)(1) of the Act, and § 351.221(c)(3)(i) of the Department's regulations.

Dated: August 26, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

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BILLING CODE 3510–DS–P

[19] *See Marine Harvest (Chile) S.A.* v. *United States.* Slip Op. 03–22 (Mar. 4, 2003), *affirming* Final Results of Redetermination Pursuant to Court Remand, 2003–22, January 7, 2003, (*upon remand from Marine Harvest (Chile) S.A.* v. *United States,* 244 F. Supp. 2d 1364 (CIT 2002)).

[20] *Id.* pages 1–7 and Exhibits 1, 2, and 3.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 8, 2004, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from India (69 FR 10666). This review covers seven manufacturers/exporters of the subject merchandise to the United States. The period of review is February 1, 2002, through January 31, 2003. We are rescinding the review with respect to Ferro Alloys Corp., Ltd. and Mukand, Ltd. because they withdrew their requests for review within the time limit specified under 19 CFR 351.213(d)(1). Finally, we have determined to revoke the antidumping duty order with respect to Viraj Alloys, Ltd., Viraj Forgings, Ltd., and Viraj Impoexpo, Ltd.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: September 14, 2004.

FOR FURTHER INFORMATION CONTACT: Greg Kalbaugh, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone (202) 482–3693.

SUPPLEMENTARY INFORMATION:

Background

This review covers the following seven manufacturers/exporters: Chandan Steel Limited (Chandan); Ferro Alloys Corp. Ltd. (FACOR); Isibars Limited (Isibars); Mukand, Ltd. (Mukand); Jyoti Steel Industries (Jyoti); Venus Wire Industries Limited; and Viraj Alloys, Ltd., Viraj Forgings, Ltd., and Viraj Impoexpo, Ltd. (collectively "Viraj").

On March 8, 2004, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on stainless steel bar (SSB) from India. *See Stainless Steel Bar From India; Preliminary Results of Antidumping Duty Administrative Review, Notice of Partial Rescission of Administrative Review, and Notice of Intent To Revoke in Part,* 69 FR 10666 (Mar. 8, 2004) (*Preliminary Results*).

We invited parties to comment on our preliminary results of review. In April 2004, we received case briefs from the petitioners (*i.e.,* Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., Slater Steels Corp., Empire Specialty Steel and the United Steelworkers of America (AFL-CIO/CLC)), Chandan, and Viraj, and rebuttal briefs from the petitioners and Viraj.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

Imports covered by this review are shipments of SSB. SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in

straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, and sections.

The SSB subject to these reviews is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Period of Review

The period of review (POR) is February 1, 2002, through January 31, 2003.

Partial Rescission of Review

On April 7, 2003, and May 9, 2003, respectively, Mukand and FACOR withdrew their requests for an administrative review. Because the petitioners did not request an administrative review of either FACOR or Mukand and both of these parties withdrew their requests within the time limit specified under 19 CFR 351.213(d)(1), we are rescinding our review with respect to these companies. (*See Preliminary Results*, 69 FR at 10667).

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether the respondents participating in the review made home market sales of the foreign like product during the POR at prices below their costs of production (COPs) within the meaning of section 773(b)(1) of the Act. We performed the cost test for these final results following the same methodology as in the *Preliminary Results*, except as discussed in the accompanying "Issues and Decision Memorandum" (Decision Memo) from Jeffrey A. May, Deputy Assistant Secretary, AD/CVD Operations, to James J. Jochum, Assistant Secretary for Import Administration, dated September 7, 2004.

We found 20 percent or more of Venus's and Viraj's sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in "substantial quantities" within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B), (C), and (D) of the Act.

Therefore, for purposes of these final results, we found that Venus and Viraj made below-cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales as the basis for determining normal value, pursuant to section 773(b)(1) of the Act.

Facts Available

In the preliminary results, we determined that, in accordance with section 776(a)(2)(A) of the Act, the use of facts available was appropriate as the basis for the dumping margins for the following producer/exporters: Chandan, Isibars, and Jyoti. We find that it continues to be appropriate to apply facts available to these respondents. Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, as provided in subsection 782(i) of the Act, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. As in the preliminary results, the Department must use facts otherwise available with regard to Isibars pursuant to sections 776(a)(2)(A) and (B) of the Act. For Chandan and Jyoti, as in the preliminary results, the Department finds that we must resort to facts otherwise available in reaching our final results, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act.

See Preliminary Results 69 FR 10668–10670, for a detailed discussion of the facts regarding each of these respondents, as well the Decision Memo at *Comment 1* for further discussion of the use of facts available for Chandan.

Adverse Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod From Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Each of the respondents was notified in the Department's questionnaires that failure to submit the requested information by the date specified might result in use of facts available. Generally, it is reasonable for the Department to assume that Chandan, Isibars, and Jyoti possessed the records necessary for this administrative review and that, by not supplying the information the Department requested, these companies failed to cooperate to the best of their ability. In addition, neither Isibars or Jyoti argued that it was incapable of providing the information the Department requested, and we found that the necessary records were within Chandan's control (*see* the Decision Memo at *Comment 1*). Accordingly, because Chandan, Isibars, and Jyoti failed to submit useable sales and/or cost information which was not only specifically requested by the Department but also fundamental to the dumping analysis, and the missing information was within the respondents' control, we have assigned these companies margins based on total adverse facts available (AFA), consistent with sections 776(a)(2)(A), (B), and (C) and 776(b) of the Act.

As AFA for Chandan, Isibars, and Jyoti, we have used the highest rate ever assigned to any respondent in any segment of this proceeding. This rate is 21.02 percent. We find that this rate, which was the rate alleged in the petition and assigned in the investigation segment of this proceeding, is sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, we find that this rate is high enough to encourage participation in future segments of this proceeding). (This margin was also assigned to Mukand in the most recently completed segment of the proceeding. *See Stainless Steel Bar From India; Final Results of Antidumping Duty Administrative Review*, 68 FR 47543 (Aug. 11, 2003) (*2001–2002 SSB AR Final*). *See also Extruded Rubber*

Thread from Malaysia; Final Results of Antidumping Duty Administrative Review, 63 FR 12752, 12762–3 (Mar. 16, 1998).) We continue to find that the information upon which this margin is based has sufficient probative value to satisfy the requirements of section 776(c) of the Act. *See Preliminary Results*, 69 FR 10670.

Revocation

On February 28, 2003, Viraj requested revocation of the antidumping duty order with respect to its sales of the subject merchandise, pursuant to 19 CFR 351.222(b). In a subsequent submission, Viraj provided each of the certifications required under 19 CFR 351.222(e).

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value (NV) in the current review period and that the company will not sell subject merchandise at less than NV in the future; (2) a certification that the company sold commercial quantities of the subject merchandise to the United States in each of the three years forming the basis of the request; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider: (1) Whether the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV; and (3) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping. *See* 19 CFR 351.222(b)(2)(i).

In the preliminarily results, we found that the request from Viraj met all of the criteria under 19 CFR 351.222. We continue to find that this is the case for Viraj. With regard to the criteria of subsection 19 CFR 351.222(b)(2), our final margin calculations show that Viraj sold SSB at not less than NV during the current review period. *See* dumping margins below. In addition, Viraj sold SSBs at not less than NV in the two previous administrative reviews in which it was involved (*i.e.*, Viraj's dumping margin was zero or *de minimis*). *See 2001–2002 SSB AR Final*, 68 FR 47543, covering the period February 1, 2001, through January 31, 2002, and *Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar From India*, 67 FR 53336 (Aug. 15, 2002), covering the period February 1, 2000, through January 31, 2001.

Based on our examination of the sales data submitted by Viraj, we determine that it sold the subject merchandise in the United States in commercial quantities in each of the consecutive years cited by Viraj to support its request for revocation. Thus, we find that Viraj had zero or *de minimis* dumping margins for its last three administrative reviews and sold in commercial quantities in each of these years. Additionally, we find that the continued application of the antidumping order is not otherwise necessary to offset dumping. *See* the Decision Memo at *Comment 3*. Therefore, we determine that Viraj qualifies for revocation of the order on SSB pursuant to 19 CFR 351.222(b)(2) and that the order with respect to merchandise produced and exported by Viraj should be revoked. In accordance with 19 CFR 351.222(f)(3), we are terminating the suspension of liquidation for any of the merchandise in question that is entered, or withdrawn from warehouse, for consumption on or after February 1, 2003, and will instruct U.S. Customs and Border Protection (CBP) to refund any cash deposits for such entries.

The petitioners have requested that the Department not revoke the order with respect to Viraj pending the resolution of outstanding litigation. However, we disagree with the petitioners because the evidence currently before us shows that Viraj has met each of the criteria set forth in 19 CFR 351.222. *See* the Decision Memo at *Comment 3* for further discussion.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review and to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memo, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period February 1, 2002, through January 31, 2003:

Manufacturer/producer/exporter	Margin percentage
Chandan Steel Limited	21.02
Isibars Limited	21.02
Jyoti Steel Industries	21.02
Venus Wire Industries Limited	0.06
Viraj Alloys, Ltd., Viraj Forgings, Ltd. and Viraj ImpoExpo, Ltd.	0.00

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), for Venus and Viraj, for those sales with a reported entered value, we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

Regarding certain of Venus's sales, for assessment purposes, we do not have the information to calculate entered value because Venus was not the importer of record for the subject merchandise. Accordingly, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). To determine whether Venus's per-unit duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on the export prices.

For Chandan, Isibars, and Jyoti, we will instruct CBP to liquidate entries at the rates indicated above.

The Department will issue appraisement instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

Because we have revoked the order with respect to Viraj's exports of subject merchandise, we will order the Customs Service to terminate the suspension of liquidation for exports of such merchandise entered, or withdrawn from warehouse, for consumption on or after February 1, 2003, and to refund all cash deposits collected.

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of SSB from India entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates indicated above (except for Venus, where no cash deposit will be required); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 12.45 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September, 7, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments

1. Use of Total Adverse Facts Available (AFA) for Chandan.
2. Use of Total AFA for Viraj.
3. Revocation for Viraj.
4. Cost of Production (COP) Data for VFL.
5. Depreciation Expenses for Viraj.
6. Interest Expenses for Viraj.
7. Waived Interest Expenses for Viraj.

[FR Doc. E4–2188 Filed 9–13–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure Magnesium and Alloy Magnesium From Canada: Final Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On May 11, 2004, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada for the period January 1, 2002, through December 31, 2002. We gave interested parties an opportunity to comment on the preliminary results.

Our analysis of the comments received on the preliminary results did not lead to any changes in the net subsidy rates. Therefore, the final results do not differ from the preliminary results. The final net subsidy rates for the reviewed companies are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: September 14, 2004.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, AD/CVD Enforcement, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4987.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 2004, the Department of Commerce ("the Department") published the preliminary results of these administrative reviews (*see Pure Magnesium and Alloy Magnesium From Canada: Preliminary Results of Countervailing Duty Administrative Reviews*, 69 FR 26069 (May 11, 2004) ("*Preliminary Results*"). Norsk Hydro Canada, Inc. ("NHCI"), one of the respondents in this review, submitted a case brief on June 10, 2004. On June 15, 2004, U.S. Magnesium, LLC. ("the petitioner"), and the Government of Québec filed rebuttal briefs.

Scope of the Reviews

The products covered by these reviews are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The pure and alloy magnesium subject to review is currently classifiable under items 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written descriptions of the merchandise subject to the order are dispositive.

Secondary and granular magnesium are not included in the scope of the order. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Period of Review

The period of review for which we are measuring subsidies is January 1, 2002, through December 31, 2002.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these administrative reviews are addressed in the September 8, 2004, *Issues and Decision Memorandum for the Final*

Results of the Eleventh Countervailing Duty Administrative Review of Pure and Alloy Magnesium From Canada ("Decision Memorandum") from Jeffrey May, Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of the issues raised in this review, and the corresponding recommendations, in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://www.ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the record and comments received, we have made no changes to the preliminary results net subsidy rates.

Final Results of Reviews

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this review. For the period January 1, 2002, through December 31, 2002, we determine the net subsidy rate for the reviewed companies to be as follows:

NET SUBSIDY RATE: PURE MAGNESIUM

Manufacturer/exporter	Percent
Norsk Hydro Canada, Inc.	1.07

NET SUBSIDY RATE: ALLOY MAGNESIUM

Manufacturer/exporter	Percent
Norsk Hydro Canada, Inc.	1.07
Magnola Metallurgy, Inc.	1.84

Assessment Rates

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection ("CBP") within 15 days of publication of these final results of reviews. As requested by NHCI on October 17, 2003, pursuant to 19 U.S.C. 1516a(g)(5)(c)(i), the Department will not order the liquidation of entries of pure or alloy magnesium from Canada exported by NHCI on or after January 1, 2002, through December 31, 2002, pending final disposition of dispute settlement proceedings under NAFTA (USA/CDA–00–1904–09 (panel) and ECC–2003–1904–01 USA, respectively) with respect to *Pure and Alloy Magnesium From Canada; Final Results of Full Sunset Review*, 65 FR 41436 (July 5, 2000). Liquidation of NHCI entries will occur at the rates described in these final results of reviews, if appropriate, following the final disposition of the previously mentioned NAFTA dispute settlement proceedings.

Cash Deposit Instructions

The Department will instruct CBP to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice value on all shipments of the subject merchandise from NHCI and Magnola entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

We will instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company (except Timminco Limited, which was excluded from the countervailing duty orders on pure magnesium and alloy magnesium from Canada (*See Countervailing Duty Orders: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 39392 (August 31, 1992)). Accordingly, the cash deposit rate that will be applied to non-reviewed companies covered by the orders is that established in *Pure and Alloy Magnesium From Canada: Final Results of the Second (1993) Countervailing Duty Administrative Reviews*, 62 FR 48607 (September 16, 1997) or the company-specific rate published in the most recent final results of an administrative review in which a company participated. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act.

Dated: September 9, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix—List of Comments and Issues in the Decision Memorandum

Comment 1: Adjusting Current Assessment Rates to Compensate for Over-assessment on Prior Entries

[FR Doc. E4–2186 Filed 9–13–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090704C]

Proposed Information Collection; Comment Request; Statement of Financial Interests, Regional Fishery Management Councils

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 15, 2004.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Bruce C. Morehead, F/SF5, RM: 13142, 1315 East-West Highway, Silver Spring, MD 20910–3282 (phone 301–713–2337).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Magnuson-Stevens Fishery Conservation and Management Act authorizes the establishment of Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring,

and revision of such fishery management plans under circumstances (a) which will enable the States, the fishing industry, consumers, environmental organizations, and other interested persons to participate in the development of such plans, and (b) which take into account the social and economic needs of fishermen and dependent communities. Section 302(j) of the Act also requires that Council members disclose their financial interest in any Council fishery. These interests include harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction.

The Act further provides that a member shall not vote on a Council decision that would have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interest of other participants in the same gear type or sector of the fishery. However, an affected individual who is declared ineligible to vote on a Council action may participate in Council deliberations relating to the decision after notifying the Council of his/her recusal and identifying the financial interest that would be affected.

II. Method of Collection

Respondents submit paper forms. With the exception of the Tribal Government nominees, Council nominees for appointment must provide and file a financial interest form as prescribed by the Secretary prior to the date of appointment. Seated Council members appointed by the Secretary, including the Tribal Government appointees, must file a financial interest form within 45 days of taking office and must file an update of their statements within 30 days of the time any such financial interest is acquired or substantially changed.

III. Data

OMB Number: 0648–0192.
Form Number: NOAA Form 88–195.
Type of Review: Regular submission.
Affected Public: Individuals or households.
Estimated Number of Respondents: 185.
Estimated Time Per Response: 35 min.
Estimated Total Annual Burden Hours: 108.
Estimated Total Annual Cost to Public: $124.00.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 2, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–20616 Filed 9–13–04; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090704A]

Proposed Information Collection; Comment Request; Emergency Beacon Registrations

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 15, 2004.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lou Rubin, 5200 Auth Road, Suitland, MD 20746 (phone 301–457–5678 ext. 112).

SUPPLEMENTARY INFORMATION:

I. Abstract

An international system exists to use satellites to detect and locate ships, aircraft, or individuals in distress if they are equipped with an emergency radio beacon. Persons purchasing a digital distress beacon, operating with a U.S. country code and in the frequency range of 406.010 to 406.100 MHz, must register it with NOAA. The data provided by registration can assist in identifying who is in trouble and in suppressing false alarms.

II. Method of Collection

The respondents complete a paper form (also available on a website) and mail or fax the form to NOAA. On-line registration is also available thereby eliminating paperwork previously required.

III. Data

OMB Number: 0648–0295.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions, and state, local, or tribal government.
Estimated Number of Respondents: 20,000.
Estimated Time Per Response: 15 minutes.
Estimated Total Annual Burden Hours: 5,000.
Estimated Total Annual Cost to Public: $8,000.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval of this information collection; they also will become a matter of public record.

Dated: September 2, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–20617 Filed 9–13–04; 8:45 am]

BILLING CODE 3510–HR–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 073004A]

Endangered Species; File No. 1462

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Inwater Research Group, Inc., 4160 NE Hyline Dr., Jensen Beach, FL, has been issued a permit to take loggerhead (*Caretta caretta*), green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On May 18, 2004, notice was published in the **Federal Register** (69 FR 28122) that a request for a scientific research permit to take loggerhead, green, hawksbill and Kemp's ridley sea turtles had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Researchers will capture sea turtles using a large mesh tangle net. Animals will be measured, flipper and passive integrated transponder (PIT) tagged, weighed, blood sampled, photographed and released. Dietary samples will also be extracted from a subset of green sea turtles using a sampling technique called gastric lavage. This research will provide size frequency, disease rate, relative abundance and feeding ecology data on marine turtles utilizing the Lake Worth and the Indian River Lagoon Systems of Florida. Information collected from this study will benefit state and federal managers in the conservation of these marine turtle species. None of the activities are expected to result in mortality. The permit is valid for five years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered and threatened species which are the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: September 8, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–20698 Filed 9–13–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Native American Tribal Insignia Database

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), 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 the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 15, 2004.

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

- E-mail: *Susan.Brown@uspto.gov*. Include "0651–0048 comment" in the subject line of the message.
- Fax: 703–308–7407, marked to the attention of Susan Brown.
- Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ari Leifman, U.S. Patent and Trademark Office, 2900 Crystal Drive, Arlington, VA 22202–3514; by telephone at 703–308–8900; or by e-mail at *Ari.Leifman@uspto.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Trademark Law Treaty Implementation Act (Pub. L. 105–330, 302, 112 Stat. 3071 (1998)) required the United States Patent and Trademark Office (USPTO) to study issues surrounding the protection of the official insignia of federally- and state-recognized Native American tribes under trademark law. The USPTO conducted the study and presented a report to the Chairman of the Committee on the Judiciary of the Senate and to the Chairman of the Committee on the Judiciary of the House of Representatives on November 30, 1999. One of the recommendations made in the report was that the USPTO create, maintain, and update an accurate and comprehensive database containing the official insignia of all federally- and state-recognized Native American tribes. In accordance with this recommendation, the Senate Committee on Appropriations directed the USPTO to create this database.

The database of official tribal insignias assists trademark attorneys in their examination of applications for trademark registration. Additionally, the database provides evidence of what a federally- or state-recognized Native American tribe considers to be its official insignia. The database serves as a reference for examining attorneys when determining the registrability of a mark that may be similar to the official insignia of a Native American tribe. The insignia database is also available to the public on the USPTO Web site.

Tribes are not required to request that their official insignia be included in the database. The entry of an official insignia into the database does not confer any rights to the tribe that submitted the insignia, and entry is not the legal equivalent of registering the insignia as a trademark under 15 U.S.C. 1051 *et seq*. The inclusion of an official tribal insignia in the database does not create any legal presumption of validity or priority, does not carry any of the benefits of Federal trademark registration, and is not a determination as to whether a particular insignia would be refused registration as a

trademark pursuant to 15 U.S.C. 1051 *et seq.*

Requests from federally-recognized tribes to enter an official insignia into the database must be submitted in writing and include: (1) A depiction of the insignia, including the name of the tribe and the address for correspondence; (2) a copy of the tribal resolution adopting the insignia in question as the official insignia of the tribe; and (3) a statement, signed by an official with authority to bind the tribe, confirming that the insignia included with the request is identical to the official insignia adopted by tribal resolution.

Requests from state-recognized tribes must also be in writing and include each of the three items above submitted by federally-recognized tribes. Additionally, requests from state-recognized tribes must include either: (a) A document issued by a state official that evidences the state's determination that the entity is a Native American tribe; or (b) a citation to a state statute designating the entity as a Native American tribe. The USPTO enters insignia that have been properly submitted by federally-or state-recognized Native American tribes into the database and does not investigate whether the insignia is actually the official insignia of the tribe making the request.

This collection includes the information needed by the USPTO to enter an official insignia for a federally- or state-recognized Native American tribe into a database of such insignia. No forms are associated with this collection.

This collection was previously approved by the Office of Management and Budget (OMB) in March 2002. In May 2003, OMB approved a change worksheet that reduced the burden estimates for this collection because the USPTO received fewer tribal insignia filings than expected. Postage costs were also added to the collection. In September 2003, OMB approved another change worksheet that made a minor reduction in the number of responses for this collection due to a low number of filings, though the estimated total burden hours were not reduced.

II. Method of Collection

By mail or facsimile to the USPTO.

III. Data

OMB Number: 0651–0048.

Form Number(s): None.

Type of Review: Extension of a currently approved collection.

Affected Public: Tribal governments.

Estimated Number of Respondents: 15 responses per year.

Estimated Time Per Response: The USPTO estimates that a federally-recognized Native American tribe will require an average of 10 minutes (0.17 hours) to complete a request to record an official insignia and that a state-recognized Native American tribe will require an average of 12 minutes (0.20 hours) to complete a request to record an official insignia, including time to gather the necessary information, prepare the appropriate documents, and submit the completed request.

Estimated Total Annual Respondent Burden Hours: 3 hours.

Estimated Total Annual Respondent Cost Burden: $144 per year. The USPTO expects that the information in this collection will be prepared by both paraprofessionals and clerical staff. The estimated rate of $48 per hour used in this submission is an average of the paraprofessional rate of $81 per hour and the clerical rate of $15 per hour. Using this rate of $48 per hour, the USPTO estimates that the respondent cost burden for submitting the information in this collection will be $144 per year.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Request to Record an Official Insignia of a Federally-Recognized Tribe	10	10	2
Request to Record an Official Insignia of a State-Recognized Tribe	12	5	1
Totals		15	3

Estimated Total Annual Non-hour Respondent Cost Burden: $7 per year. There are no capital start-up, maintenance, or recordkeeping costs associated with this information collection. There are also no filing fees for submitting a tribal insignia for recording. However, this collection does have annual (non-hour) costs in the form of postage costs.

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO estimates that the average first-class postage cost for a submission mailed through the U.S. Postal Service will be 49 cents and that up to 15 submissions will be mailed to the USPTO per year. The total estimated postage cost for this collection is approximately $7 per year.

The total non-hour respondent cost burden for this collection in the form of postage costs is $7 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 8, 2004.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services Data Administration Division.

[FR Doc. 04–20684 Filed 9–13–04; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) to

the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Ms. Shelly Ryan, at (202) 606–5000, extension 549, (*sryan@cns.gov*); (TTY/TDD) at (202) 606–5256 between the hours of 9 a.m. and 4 p.m. Eastern Standard Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Office for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**.

(1) *By fax to:* (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: Katherine_T._Astrich@omb.eop.gov.*

The initial 60-day **Federal Register** Notice for the Peer Reviewer Application was published on June 24, 2004. This comment period ended on August 23, 2004; no comments were received.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Type of Review: Currently approved through emergency clearance.

Agency: Corporation for National and Community Service.

Title: Peer Reviewer Application.

OMB Number: 3045–0090.

Agency Number: None.

Affected Public: Individuals who are interested in serving as a peer reviewer.

Total Respondents: 2,000.

Frequency: Annually (respondents update as needed).

Average Time Per Response: Total of 40 minutes.

Estimated Total Burden Hours: 1,333 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description: The information collected will be used by the Corporation to select peer reviewers for each grant competition. All individuals interested in applying as peer reviewers or facilitators of the peer review panels will be required to complete an electronic application. Modifications include combining the Zoomerang survey and the electronic application into one.

Dated: September 8, 2004.

Marlene Zakai,

Director, Office of Grants Policy and Operation.

[FR Doc. 04–20668 Filed 9–13–04; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Monday, September 20, 2004, 1 p.m.–3 p.m.

PLACE: Corporation for National and Community Service, 1201 New York Avenue, NW., 8th Floor, Room 8410, Washington, DC 20525.

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Remarks
II. Consideration of Prior Meeting's Minutes
III. Committee Reports
IV. CEO Report
V. Public Comment

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m. Friday, September 17, 2004.

CONTACT PERSON FOR MORE INFORMATION: David Premo, Public Affairs Associate, Public Affairs, Corporation for National and Community Service, 8th Floor, Room 8612C, 1201 New York Avenue NW., Washington, DC 20525. Phone (202) 606–5000 ext. 278. Fax (202) 565–2784. TDD: (202) 565–2799. E-mail: *dpremo@cns.gov.*

Dated: September 9, 2004.

Frank R. Trinity,

General Counsel.

[FR Doc. 04–20748 Filed 9–10–04; 9:59 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 14, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 8, 2004.

Angela C. Arrington,

Leader, Information Management Case Services Team. Regulatory Information Management Services, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: Extension.

Title: Streamlined Process for Education Department General Administrative Regulations (EDGAR) Approved Grant Applications.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Businesses or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses—1.

Burden Hours—1.

Abstract: In April 1997, EDGAR's menu of selection criteria became effective. For each competition, the Secretary would select one or more criteria that best enable the Department to identify the highest quality applications consistent with the program purpose, statutory requirements, and any priorities established. This allows the Secretary the flexibility to weigh the criteria according to the needs of each individual program. This menu of selection criteria will provide the Department the flexibility to choose a set of criteria tailored to a given competition and obviate the need to create specific selection criteria through individual program regulations. ED is requesting a streamlined clearance process for programs of approved applications that choose to change: (1) Criteria from the same EDGAR menu or (2) program criteria to EDGAR criteria.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2580. When you access the information collection, click on "Download Attachments "to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E4–2179 Filed 9–13–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Student Assistance General Provisions, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, William D. Ford Federal Direct Loan, Federal Pell Grant, and Leveraging Educational Assistance Partnership Programs

AGENCY: Department of Education.

ACTION: Notice of required electronic processes and related system requirements.

SUMMARY: We give notice that, beginning with the 2005–2006 award year, institutions participating in the Federal student aid programs must ensure they participate in the designated electronic processes included in this notice and satisfy the hardware and software specifications described in this notice. The Federal student aid programs are authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA Programs).

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations in 34 CFR 668.16(o) provide, in part, that to be administratively capable an institution must participate in electronic processes designated by the Secretary. These processes were first identified in a notice published in the **Federal Register** on September 19, 1997 (62 FR 49414). In that notice, we also provided information regarding the hardware and software requirements needed for an institution to participate in the designated electronic processes. Because of advances in technology, we updated those hardware and software requirements in a **Federal Register** notice published on December 22, 2000 (65 FR 80841).

In this notice, we update both the designated electronic processes that an institution must participate in and the software and hardware requirements (presented as a minimum system configuration and an optimal system configuration) that an institution must have to participate in these processes. Most of the electronic processes included in this notice are the same processes that were included in the previous **Federal Register** notices, although the specific technology and/or names of those processes may have changed (for example, the Student Aid Information Gateway (SAIG) has replaced the Title IV Wide Area Network (TIV WAN)).

A new process included in this notice is that all institutions must send and receive origination and disbursement data for the Federal Pell Grant Program and the Federal Direct Loan Program to our Common Origination and Disbursement (COD) system using the Extensible Markup Language (XML) "Common Record: COD." Beginning with the 2005–2006 award year, this requirement will apply to all institutions, including COD phase-in participants that currently submit and receive information using flat-file record formats. Additional information on this requirement is provided in item 11 under Designated Electronic Processes below.

Designated Electronic Processes

To be in compliance with 34 CFR 668.16(o), an institution must:

1. Participate in the Student Aid Internet Gateway (SAIG);

2. Use our electronic process whenever it is required to submit or update its Application for Approval to Participate in the Federal Student Aid Programs (for example, when the institution initially applies to participate, when it is recertified, or when it reports required changes, or seeks to be reinstated);

3. Use our electronic processes to submit its Fiscal Operations Report and Application to Participate (FISAP) and other required reports or requests for the campus-based programs (Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant);

4. Electronically receive Institutional Student Information Records (ISIRs) from our Central Processing System (CPS) using the Student Aid Information Gateway (SAIG);

5. Use the Student Aid Information Gateway (SAIG) and approved electronic processes when submitting a Free Application for Federal Student Aid (FAFSA) on behalf of an applicant for Federal student aid to our Central Processing System (CPS) or when submitting corrections or updates to FAFSA data to CPS for an applicant;

6. If not already listed, add itself to the Central Processing System (CPS) record for a student it wishes to consider for Title IV assistance;

7. Have on-line Internet access to the National Student Loan Data System (NSLDS) and submit to NSLDS its Federal Perkins Loan data, its student enrollment records, its Title IV program overpayments, and its NSLDS Transfer Monitoring records using either the

offered Student Aid Information Gateway (SAIG) services or the Internet, as appropriate;

8. Access the "Information for Financial Aid Professionals" (IFAP) Web site;

9. Electronically submit its annual compliance and financial statement audits, and any other required audits;

10. Receive its draft and official cohort default rate data electronically; and

11. Beginning with the 2005–2006 award year, send and receive origination and disbursement data for the Federal Pell Grant Program and the Federal Direct Loan Program to the COD system using the Student Aid Information Gateway (SAIG) and the Extensible Markup Language (XML) "Common Record: COD" that complies with the published schema for each award year.

Technical Specifications

For an institution to effectively and efficiently participate in the designated electronic processes listed above, it must obtain appropriate software and hardware. While many institutions currently participate in these electronic processes, at least partially, using mainframe technology, many other institutions, and to some extent many of the mainframe schools, use a desktop computing environment for all or part of their Title IV student aid processing. Specifically, many institutions use our EDCONNECT process for receiving and sending data over the SAIG. Also, many institutions use one or more of the processes included in our EDExpress suite of products. Accordingly, we are providing the following minimum and optimal hardware and software configurations as part of this electronic processes notice.

Although all of the required electronic processes included in this notice can be performed using the minimum configuration, we strongly recommend the optimal configuration, particularly in cases where an institution sends or receives 4,000 or more records in an XML document (batch). This is because the new XML file formats used by EDExpress and COD (and in the future by CPS) are larger and require greater storage and computing power. For the same reason, while we include "high speed Internet connection" only in the Optimal Configuration, we encourage institutions to consider moving away from a "dial-up" connection if they intend on submitting or receiving large amounts of data. This will significantly reduce transmission time and will increase the probability of an uninterrupted transmission session.

SYSTEM CONFIGURATIONS

	Minimum configuration	Optimal configuration
IBM or Fully IBM-compatible PC	1.2 GHz Processor 512 MB RAM 60 GB Hard Drive 48x CD–ROM Drive (CD–RW recommended) Windows compatible keyboard and mouse	2.8 GHz/333 MHz Processor. 1 GB RAM. 80 GB Hard Drive. 48x CD–ROM Drive (CD–RW recommended). Windows compatible keyboard and mouse.
Monitor and Video Card	Capable of Super Video Graphics Adapter (SVGA) resolution (800 x 600) or higher.	Capable of Super Video Graphics Adapter (SVGA) resolution (800 x 600) or higher.
Internet Connection	56 Kbps Modem (meets or is upgradeable to V.90 standard).	High speed Internet connection (*i.e.*, DSL).
Printer	Laser printer capable of printing on standard paper (8.5″ x 11″).	Laser printer capable of printing on standard paper (8.5″ x 11″).
Operating System	Windows 2000 or Windows XP Professional recommended (FSA will support Windows 98/98SE/ME only until June 30, 2006).	Windows 2000 or Windows XP Professional recommended (FSA will support Windows 98/98SE/ME only until June 30, 2006).

FOR FURTHER INFORMATION CONTACT: For general questions relating to these requirements, contact John Kolotos, U.S. Department of Education, 400 Maryland Avenue, SW., (UCP room 113F1), Washington, DC 20202. Telephone: (202) 377–4027, FAX: (202) 275–4552, or by e-mail: *john.kolotos@ed.gov.*

For questions related to the Student Aid Information Gateway (SAIG) and to the Central Processing System (CPS), contact CPS/SAIG Technical Support at 1–800–330–5947.

For questions related to the Application To Participate, the Information for Financial Aid Professionals (IFAP) Web site, and the electronic submission of audits, contact the Customer Service Call Center for Schools at 1–800–433–7327.

For questions related to the campus-based programs, contact the Campus-Based Call Center at 1–877–801–7168.

For questions related to the National Student Loan Data System (NSLDS), contact NSLDS Customer Service at 1–800–999–8219.

For questions related to the Common Origination and Disbursement (COD) system, contact the COD School Relations Center at 1–800–848–0978 for the Federal Direct Loan Program or 1–800–474–7268 (1–800–4PGRANT) for the Federal Pell Grant Program.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service 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 John Kolotos using the contact information listed above.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1070a, 1070b–1070b–4, 1070c–1070c–4, 1071–1087–2, 1087a–1087j, 1087aa–1087ii, 1094, and 1099c; 42 U.S.C. 2751–2756b.

(Catalog of Federal Domestic Assistance numbers: 84.007 Federal Supplemental Educational Opportunity Grant (FSEOG) Program; 84.032 Federal Family Education Loan (FFEL) Programs; 84.033 Federal Work-Study (FWS) Program; 84.038 Federal

Perkins (Perkins) Loans; 84.063) Federal Pell Grant (Pell) Program; 84.069 Leveraging Educational Assistance Partnership (LEAP) Programs; and 84.268 William D. Ford Federal Direct Loan (Direct Loan) Programs)

Dated: September 8, 2004.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. E4–2185 Filed 9–13–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, and/or materials in alternative format) should notify Ms. Hope M. Gray at (202) 219–2099 or via e-mail at *hope.gray@ed.gov* no later than 2 p.m. on Thursday, September 23, 2004. We will attempt to meet requests after this date but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATE AND TIME: Monday, September 27, 2004, beginning at 1 p.m. and ending at approximately 3 p.m.

ADDRESSES: 80 F Street, NW., Suite 412, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, 80 F Street, NW., Suite 413, Washington, DC 20202–7582; (202) 219–2099.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. In addition, Congress expanded the Advisory Committee's agenda in the Higher Education Amendments of 1998 in several important areas: Access, Title IV modernization, distance education, and early information and needs assessment. Specifically, the Advisory Committee is to review, monitor and evaluate the Department of Education's progress in these areas and report recommended improvements to Congress and the Secretary.

The FY2004 Consolidated Appropriations Act (H.R. 2673), which was signed into law on January 23, 2004, directs the Advisory Committee to examine the federal financial aid formula and application forms in order to simplify and streamline the programs to make the system easier, more responsive, and fairer for students and families. The Advisory Committee is well suited to conduct this study, drawing upon the expertise of its eleven members and its experience conducting other broad studies on financial aid issues. The Advisory Committee also has the particular mission of examining the impact of these issues on low- and moderate-income students, a specific goal of the study.

The proposed agenda includes: (a) A discussion of the plan and direction for Phase II of the simplification study, and (b) election of officers. Space is limited, and you are encouraged to contact the Advisory Committee staff through the Internet at *ADV_COMSFA@ed.gov no later than Thursday, September 23, 2004, if you wish to participate.* Also, you may contact the Advisory Committee staff at (202) 219–2099. The Advisory Committee will meet in Washington, DC via teleconference on Monday, September 27, 2004, from 1 p.m. until approximately 3 p.m.

Space is limited and you are encouraged to register early if you plan to participate. You may register through the Internet by e-mailing the Advisory Committee at *ADV_COMSFA@ed.gov* or at *Tracy.Deanna.Jones@ed.gov*. Please include your name, title, affiliation, complete address (including Internet and e-mail—if available), and telephone and fax numbers. If you are unable to register electronically, you may mail or fax your registration information to the Advisory Committee staff office at (202) 219–3032. Also, you may contact the Advisory Committee staff at (202) 219–2099. **The registration deadline is Thursday, September 23, 2004.**

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC from the hours of 9 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays. Information regarding the simplification study will also be made available on the Advisory Committee's Web site *http://www.ed.gov/ACSFA.*

Dr. Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 04–20631 Filed 9–13–04; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

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), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, September 29, 2004, 1 p.m.–8:30 p.m.

ADDRESSES: Cities of Gold Hotel, Pojoaque, NM.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail: *mmanzanares@doeal.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Wednesday, September 29, 2004

1 p.m.
Call to Order by Ted Taylor, Deputy Designated Federal Officer (DDFO); Establishment of a Quorum; Welcome and Introductions by Chair; Approval of Agenda; Approval of Minutes of July 28, 2004

1:15 p.m.
Public Comment

1:30 p.m.
Consideration and Action of Proposed Bylaws Amendment No. 5, as per Section XII, page 13, of the NNMCAB Bylaws. (Tabled from 3–31–04)
Consideration and Action of Proposed Bylaws Amendment No. 6
1:45 p.m.
Board Business
A. Election of Chair and Vice-Chair for FY 2005
B. Recruitment/Membership Update
C. Report from Chair
D. Report from DOE, Ted Taylor, DDFO
E. Report from Executive Director, Menice S. Manzanares
F. Consideration and Action on Proposed FY 2005 Work Plans
G. New Business
2:30 p.m.
Break
2:45 p.m.
Reports
A. Executive Committee—Tim DeLong
B. Waste Management Committee, Jim Brannon
C. Environmental Monitoring, Surveillance and Remediation Committee, Tim DeLong
D. Community Involvement Committee, Grace Perez
E. Ad Hoc Committee on Bylaws, Jim Brannon
Second Reading and Action on Amendments 7 through 11
F. Ad Hoc Committee on Constituency Seats, Grace Perez
G. Comments from Ex-Officio Members
5 p.m.
Dinner Break
6 p.m.
Public Comment
6:15 p.m.
Presentation on Potential Expansion of Technical Area 54 (Area G) at Los Alamos National Laboratory, James Nunz, Los Alamos Site Office
7:15 p.m.
Break
7:30 p.m.
Prioritize "Opportunities for Improvement" from May Retreat
8 p.m.
Comments from Board Members and Recap of Meeting
8:30 p.m.
Adjourn

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org.*

Issued at Washington, DC on September 9, 2004.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–20697 Filed 9–13–04; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–111–000]

Cedar II Power Corporation; Notice of Filing

September 7, 2004.

Take notice that on September 7, 2004, Cedar II Power Corporation (Cedar II), pursuant to Rule 602 of the Commission's Rules of Practice and Procedures, 18 CFR 385.602 (2004), submitted for filing an executed Settlement Agreement. Cedar II states that the Settlement Agreement resolves all issues in the pending petition for declaratory order filed with the Commission on June 18, 2004.

In accordance with Rule 602(f) of the Commission Rules of Practice and Procedure, 18 CFR 385.602(f), any person desiring to comment on this Offer of Settlement should file its comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, by **September 15, 2004.** Reply comments will be due no later than **September 17, 2004.** This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call toll-free (866) 208–3676, for TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2175 Filed 9–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–574–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 7, 2004.

Take notice that on September 1, 2004, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective October 1, 2004:

67th Revised Sheet No. 8A
59th Revised Sheet No. 8A.01
59th Revised Sheet No. 8A.02
19th Revised Sheet No. 8A.04
62nd Revised Sheet No. 8B
55th Revised Sheet No. 8B.01
11th Rev. Sheet No. 8B.02

FGT states that the tariff sheets listed above are being filed pursuant to Section 27 of the General Terms and Conditions (GTC) of FGT's Tariff which provides for the recovery by FGT of gas used in the operation of its system and gas lost from the system or otherwise unaccounted for.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2171 Filed 9–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–575–000]

Northwest Pipeline Corporation, Duke Energy Trading and Marketing, L.L.C.; Notice of Joint Petition for Expedited Grant of Limited Waivers

September 7, 2004.

Take notice that on September 1, 2004, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, Northwest Pipeline Corporation (Northwest) and Duke Energy Trading and Marketing, L.L.C. (DETM) tendered for filing a Joint Petition for Expedited Grant of Limited Waivers.

Northwest and DETM petition the Commission for a grant of a limited waiver, to the extent required, of: (i) Certain of Northwest's capacity release tariff provisions; and (ii) the Commission's Order No. 636–A policy regarding the "tying" of gas delivery contracts to released transportation capacity. Northwest and DETM state that the requested waivers will enable them to permanently transfer DETM's portfolio of Northwest transportation capacity and dependent gas delivery contracts to DETM's Prearranged Replacement Shipper or to some other third-party replacement shipper who may prevail in the capacity release bidding process. Northwest and DETM further request expedited action on the requested waivers, so that the transportation releases may be made effective no later than November 1, 2004.

Northwest states that copy of this filing has been served on Northwest's jurisdictional customers and upon affected State regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern standard time on September 14, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2172 Filed 9–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–576–000]

Pine Needle LNG Company, LLC; Notice of Proposed Changes In FERC Gas Tariff

September 7, 2004.

Take notice that on September 1, 2004, Pine Needle LNG Company, LLC (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective October 1, 2004:

Third Revised Sheet No. 40
Second Revised Sheet No. 57
Second Revised Sheet No. 58
Second Revised Sheet No. 59
Second Revised Sheet No. 60
Second Revised Sheet No. 61
Second Revised Sheet No. 62

Pine Needle states that the purpose of the instant filing is to revise section 17.1(a)(iv) of the general terms and conditions (GT&C) to provide that the original nomination provided by a customer for each day shall apply to the intraday cycles for the gas day unless the customer revises the nomination.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2173 Filed 9–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–425–007]

Southern Star Central Gas Pipeline, Inc.; Notice of Negotiated Rate

September 7, 2004.

Take notice that on September 1, 2004, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing copies of a negotiated rate agreement between Southern Star and Empire District Electric Co. (Empire) in accordance with section 31 of Southern Star's General Terms and Conditions and its negotiated rate authority as granted by the Commission in Docket No. RP00–425.

Southern Star states that the negotiated rate agreement between Southern Star and Empire relates to a negotiated rate transaction under Rate Schedule FTS–M applicable for the transportation of gas to Empire as it relates to facilities authorized and constructed in Docket No. CP02–426.

Southern Star states that a copy of the revised tariff sheet is being mailed to all of Southern Star's jurisdictional customers and interested State commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant and any party to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2170 Filed 9–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–578–000]

Texas Eastern Transmission, LP; Notice of Compliance Report

September 7, 2004.

Take notice that on September 1, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing pursuant to section 9.1 of the General Terms and Conditions of its FERC Gas Tariff, Seventh Revised Volume No. 1, its report of recalculated operational segment capacity entitlements to become effective November 1, 2004.

Texas Eastern states that copies of the filing were served on all affected customers of Texas Eastern and interested State commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2168 Filed 9–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–1315–002, et al.]

AES Ironwood, LLC, et al.; Electric Rate and Corporate Filings

September 7, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. AES Ironwood, LLC

[Docket Nos. ER01–1315–002 and ER04–1010–001]

Take notice that on August 31, 2004, AES Ironwood, LLC (Ironwood) submitted for filing its revised triennial market power update in compliance with Docket No. ER01–1315–000, Letter Order (issued June 5, 2001), AEP Power Marketing, Inc., *et al.*, 107 FERC ¶ 61,018, on reh'g, 108 FERC ¶ 61,026 (2004), and Acadia Power Partners, LLC, *et al.*, 107 FERC ¶ 61,168 (2004). Ironwood also submitted for filing amendments to its market-based rate tariff implementing six (6) new market behavior rules adopted by the Commission in Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorization, 105 FERC ¶ 61,218 (2003). In addition, Ironwood also submitted its revision to FERC Electric Tariff, Original Volume No. 1, and its first revision to its Statement of Policy and Code of Conduct.

Comment Date: 5 p.m. eastern time on September 21, 2004.

2. Southern California Edison Company

[Docket No. ER04–922–001]

Take notice that, on August 31, 2004, Southern California Edison (SCE) submitted a compliance filing pursuant to the Commission's letter order issued August 6, 2004, in Docket No. ER04–922–000.

SCE states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on September 21, 2004.

3. NewCorp Resources Electric Cooperative, Inc.

[Docket No. ER04–1149–001]

Take notice that on August 31, 2004, NewCorp Resources Electric Cooperative, Inc. (NewCorp) tendered for filing an amendment to its Network Integration Transmission Service Agreement with Cap Rock Energy Corporation filed on August 25, 2004, in Docket No. ER04–1149–000.

Comment Date: 5 p.m. eastern time on September 21, 2004.

4. New England Power Pool

[Docket No. ER04–1162–000]

Take notice that on August 31, 2004, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include Barclays Bank PLC and to terminate the memberships of Aleph One, Inc. and Energy Atlantic, LLC. The Participants Committee requests an effective date of August 1, 2004, for the termination of Aleph One, Inc. and Energy Atlantic, LLC and an effective date of November 1, 2004, for the commencement of participation in NEPOOL by Barclays.

The Participants Committee states that copies of these materials were sent to the New England State governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: 5 p.m. eastern time on September 21, 2004.

5. San Diego Gas & Electric Company

[Docket No. ER04–1163–000]

Take notice that on August 31, 2004, San Diego Gas & Electric Company (SDG&E) tendered for filing revisions to its Transmission Owner Tariff, FERC Electric Tariff, Original Volume No. 11, to reflect proposed revisions to SDG&E's Transmission Formula Rate. SDG&E requests an effective date of September 1, 2004, for the proposed revisions.

SDG&E states that copies of the filing have been served on the California Public Utilities Commission and the CAISO.

Comment Date: 5 p.m. eastern time on September 21, 2004.

6. Reliant Energy Seward, LLC

[Docket No. ER04–1164–000]

Take notice that on August 31, 2004, Reliant Energy Seward LLC (Seward LLC) submitted its rate schedule and supporting cost data for a proposed Reactive Support and Voltage Control from Generation Sources Service for its 521 MW (net summer rating) waste coal generating facility located in East Wheatfield Township, Pennsylvania.

Comment Date: 5 p.m. eastern time on September 21, 2004.

7. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER04–1165–000]

Take notice that on August 31, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing, pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, revisions to section 2.2 and Attachment J of the Midwest ISO's Open Access Transmission Tariff (the Midwest ISO OATT) to establish a methodology to govern exercise of reservation priority rights by certain existing firm service customers. The Midwest ISO states that this filing responds to the Commission's recent invitation to the Midwest ISO to provide for such a methodology in its tariff on a prospective basis.

The Midwest ISO states it has served copies to all its members, member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions in the region and in addition, the filing has been posted electronically on the Midwest ISO's Web sites at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: 5 p.m. eastern time on September 21, 2004.

8. Twelvepole Creek, LLC

[Docket No. ER04–1166–000]

Take notice that on August 31, 2004, Twelvepole Creek, LLC (Twelvepole Creek) submitted its rate schedule and supporting cost data for a proposed Reactive Support and Voltage Control from Generation Sources Service for its Ceredo generation facility located in Wayne County, West Virginia.

Comment Date: 5 p.m. eastern time on September 21, 2004.

9. Wisconsin River Power Company

[Docket No. ER04–1167–000]

Take notice that on August 31, 2004, Wisconsin River Power Company (WRPCo) tendered for filing Third Revised Rate Schedule FERC No. 2 (Third Revised Rate Schedule) by and among WRPCo, Consolidated Water Power Company (CWPCo), Wisconsin Public Service Corporation (WPS) and Wisconsin Power and Light Company (WP&L). WRPCo states that the Third Revised Rate Schedule modifies the power sale and purchase obligations of WRPCo, CWPCo and WPS.

WRPCo respectively requests that the Commission allow the Third Revised Rate Schedule to become effective as of September 1, 2004, the day after filing.

WRPCo states that copies of the filing were served upon CWPCo, WPS, WP&L, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment Date: 5 p.m. eastern time on September 21, 2004.

10. California Independent System Operator Corporation

[Docket No. ER04–1168–000]

Take notice that, on August 31, 2004, the California Independent System Operator Corporation (ISO) submitted an informational filing as to the ISO's updated transmission Access Charge rates effective as of September 1, 2004.

The ISO states that this filing has been served upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, the Participating Transmission Owners, and upon all parties with effective

Scheduling Coordinator Service Agreements under the ISO Tariff. The ISO states that it is posting the filing on the ISO Home Page.

Comment Date: 5 p.m. eastern time on September 21, 2004.

11. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–1169–000]

Take notice that on August 31, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the Midwest ISO Transmission Owners submitted for filing proposed revisions to the Midwest ISO Open Access Transmission Tariff to accommodate the City of Columbia, Missouri, a new transmission owner member of the Midwest ISO.

The Midwest ISO and the Midwest ISO Transmission Owners requested an effective date of August 1, 2004.

The Midwest ISO and the Midwest ISO Transmission Owners have also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, as well as all State commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO further states that it will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. eastern time on September 21, 2004.

12. Wisconsin Electric Power Company

[Docket No. ER04–1170–000]

Take notice that on August 31, 2004, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an Invoice Netting Agreement between Wisconsin Electric and Manitoba Hydro (the Agreement). Wisconsin Electric states that the Agreement permits the netting of payments owed under separate agreements for the sale of energy and capacity entered into by Wisconsin Electric and Manitoba Hydro. Wisconsin Electric requests an effective date of August 10, 2004, to permit the netting of invoices for July service which will be due during the month of August.

Comment Date: 5 p.m. eastern time on September 21, 2004.

13. PJM Interconnection, L.L.C.

[Docket No. ER04–1171–000]

Take notice that on August 31, 2004, PJM Interconnection, L.L.C. (PJM) submitted for filing revisions to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., to incorporate language accepted by the Commission in prior versions of these documents, but not previously integrated into the current effective tariff sheets, and to correct minor typographical and formatting errors.

PJM requests waiver of the Commission's notice regulations to permit each of the revised tariff sheets to become effective as of the current effective date of the sheet that is being revised, as indicated in the filing.

PJM states that copies of this filing have been served on all PJM members, and on each state electric utility regulatory commission in the PJM region.

Comment Date: 5 p.m. eastern time on September 21, 2004.

14. NorthWestern Corporation

[Docket No. ES04–47–000]

Take notice that on September 2, 2004, NorthWestern Corporation (NorthWestern) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue warrants for up to 5.305 million shares of and up to an additional 7.571 million shares of common stock.

NorthWestern also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: 5 p.m. eastern time on September 28, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and any parties to the proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2176 Filed 9–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

September 7, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License;

b. *Project No.:* 2195–011;

c. *Date Filed:* August 26, 2004;

d. *Applicant:* Portland General Electric Company;

e. *Name of Project:* Clackamas River Hydroelectric Project, P–2195 (formerly Oak Grove, P–135 and North Fork, P–2195 projects);

f. *Location:* On the Oak Grove Fork of the Clackamas River on the Mount Hood National Forest, and on the Clackamas River, in Clackamas County, Oregon, near Estacada, Oregon;

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r);

h. *Applicant Contact:* Julie Keil, Portland General Electric, 121 SW Salmon Street, Portland, Oregon 97204, Phone: (503) 464–8864;

i. *FERC Contact:* John Blair at (202) 502–6092; e-mail *john.blair@ferc.gov*;

j. The existing 44-megawatt Oak Grove Project consists of a 100-foot-high dam at the lower end of Timothy Lake

and a 68-foot-high diversion dam below Lake Harriet, both on the Oak Grove Fork of the Clackamas River. The powerhouse is located on the Clackamas River. The Oak Grove project is located on U.S. Forest Service and Bureau of Land Management Land. The 129-megawatt North Fork Project is comprised of three developments on the Clackamas River: A 206-foot-high dam with powerhouse located at the lower end of North Fork Reservoir; a 47-foot-high dam with powerhouse located at the lower end of Faraday Lake; and a 85-foot-high dam with powerhouse located at the lower end of Estacada Lake. The North Fork Project is located on U.S. Forest Service and Bureau of Land Management land. On June 18, 2003 Oak Grove and North Fork licenses were amended combining the two projects into one license called the Clackamas River Project No. 2195;

k. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above;

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

l. *Procedural schedule and final amendments:* A schedule for processing the application will be provided in a future notice.

Final amendments to the application must be filed with the Commission no later than 30 days from the date when the notice soliciting terms and conditions is issued.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2169 Filed 9–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

September 7, 2004.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* P–11910–000.

c. *Date filed:* August 31, 2004.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Applegate Dam Hydroelectric Project.

f. *Location:* On the Applegate River, near the town of Medford, Jackson County, Oregon. The proposed project would be located at the existing Applegate dam and reservoir, which are owned and operated by the Department of the Army, Corps of Engineers. The proposed project boundary would include approximately 8.3 acres of U.S. lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442, (208)745–0834

i. *FERC Contact:* Patti Leppert, *patricia.leppert@ferc.gov,* (202) 502–6304.

j. Pursuant to 18 CFR 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

k. *Deadline for filing additional study requests and requests for cooperating agency status:* October 31, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov* under the "e-Filing" link.

l. The application is not ready for environmental analysis at this time.

m. The Applicant proposes to utilize the existing Applegate Dam, Applegate Reservoir, outlet works, and spillway, owned and operated by the Department of the Army, Corps of Engineers. The Applicant proposes to construct a powerhouse with an installed capacity of 10 megawatts at the area downstream from the dam. The Applicant also proposes to construct a new 15-mile-long, 69-kilovolt overhead power transmission line to connect the powerhouse with a substation located at Ruch, Oregon. The average annual generation is estimated to be 44,300,000 kilowatt-hours.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are initiating consultation with the Oregon State Historic Preservation Officer (SHPO), as required by Section106 of the National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

p. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance/Deficiency Letter—October

2004.
Request Additional Information—October 2004.
Issue Acceptance Letter—January 2005.
Issue Scoping Document 1 for comments—February 2005.
Request Additional Information (if necessary)—April 2005.
Issue Scoping Document 2—June 2005.
Notice that application is ready for environmental analysis (EA)—June 2005.
Notice of the availability of the draft EA—December 2005.
Notice of the availability of the final EA—June 2006.
Ready for Commission's decision on the application—October 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2174 Filed 9–13–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Notice

September 8, 2004.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: September 15, 2004, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*** Note.**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, telephone (202) 502–8400. For a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

868th—Meeting, September 15, 2004

Regular Meeting, 10 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters
A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations
A–3.
Docket# AD04–11, 000, Staff Report on Natural Gas Storage
A–4.
Docket# AD04–12, 000, Cost Ranges for the Development and Operation of a "Day One" RTO

Markets, Tariffs and Rates—Electric

E–1.
Docket# ER02–1656, 017, California Independent System Operator Corporation
Other#s ER02–1656, 018, California Independent System Operator Corporation
ER02–1656, 019, California Independent System Operator Corporation
E–2.
Docket# ER04–925, 001, Merrill Lynch Commodities, Inc.
E–3.
Docket# ER04–691, 000, Midwest Independent Transmission System Operator, Inc.
Other#s ER04–106, 002, Midwest Independent Transmission System Operator, Inc.
EL04–104, 000, Public Utilities With Grandfathered Agreements in the Midwest ISO Region
E–4.
Docket# ER04–829, 000, PJM Interconnection, LLC and Virginia Electric and Power Company
Other#s ER04–829, 001, PJM Interconnection, LLC and Virginia Electric and Power Company
E–5.
Docket# ER04–834, 000, Virginia Electric and Power Company
E–6.
Docket# RM04–12, 000, Financial Report and Cost Accounting, Oversight and Recovery Practices for Regional Transmission Organizations and Independent System Operators
E–7.
Omitted
E–8.
Omitted
E–9.
Omitted
E–10.
Docket# RT04–1, 001, Southwest Power Pool, Inc.
Other#s ER04–48, 001, Southwest Power Pool, Inc.
E–11.
Docket# ER04–1077, 000, PJM Interconnection, LLC
E–12.
Docket# ER04–1033, 000, Wabash Valley Power Association, Inc.
Other#s ER04–789, 000, Wabash Valley Power Association, Inc.
ER04–802, 000, Wabash Valley Power Association, Inc.
E–13.
Docket# ER04–1034, 000, Florida Power & Light Company
E–14.
Omitted
E–15.
Docket# ER04–1055, 000, Riverside Energy Center, LLC
E–16.
Docket# ER04–1059, 000, RockGen Energy, LLC
E–17.
Docket# ER04–886, 000, Entergy Services, Inc.
E–18.
Docket# ER04–1064, 000, New England Power Pool
E–19.
Docket# ER04–1091, 000, Illinois Power Company
E–20.
Omitted
E–21.
Omitted
E–22.
Docket# ER00–1, 004, Cross-Sound Cable Company, LLC
E–23.
Docket# ER02–2595, 000, Midwest Independent Transmission System Operator, Inc.
Other#s ER02–2595, 003, Midwest Independent Transmission System Operator, Inc.
E–24.
Docket# ER03–599, 000, Entergy Services, Inc.
Other#s ER03–599, 001, Entergy Services, Inc.
ER03–599, 002, Entergy Services, Inc.
ER03–599, 003, Entergy Services, Inc.
E–25.
Docket# NJ04–4, 000, Orlando Utilities Commission
E–26.
Docket# ER03–647, 004, New York Independent System Operator, Inc.
E–27.
Omitted
E–28.
Docket# ER98–997, 003, California Independent System Operator Corporation
Other#s
ER98–1309, 002, California Independent System Operator Corporation
ER02–2297, 002, California Independent System Operator Corporation
ER02–2298, 002, California Independent System Operator Corporation
E–29.
Docket# RT04–1, 004, Southwest Power Pool, Inc.
Other#s ER04–48, 004, Southwest Power Pool, Inc.
E–30.
Docket# QF95–328, 006, EcoEléctrica, L.P.
E–31.
Omitted
E–32.
Omitted
E–33.
Docket# TS04–261, 000, Alcoa Power Generating Inc.
Other#s TS04–255, 000, Cross Sound Cable Company, LLC
TS04–242, 000, Daughin Island Gathering Partners
TS04–6, 000, Distrigas of Massachusetts LLC
TS04–236, 000, Distrigas of Massachusetts LLC
TS04–267, 000, El Paso Corporation
TS04–150, 000, Granite State Gas Transmission Co.

TS04–262, 000, High Island Offshore System, LLC
TS04–249, 000, Kinder Morgan Pipelines
TS04–271, 000, Kinder Morgan Pipelines
TS04–272, 000, Kinder Morgan Pipelines
OA04–1, 000, Lincoln Electric System
TS04–209, 000, Midwestern Gas Transmission Co.
TS04–208, 000, Northern Border Pipeline Company
TS04–248, 000, National Fuel Gas Supply Corporation
TS04–3, 000, NorthWestern Energy
TS04–3, 001, NorthWestern Energy
TS04–252, 000, Ohio Valley Electric Corporation and Indiana-Kentucky Electric Corporation
TS04–184, 000, Panther Interstate Pipeline Energy, LLC
TS04–263, 000, Petal Gas Storage, L.L.C.
TS04–231, 000, Questar Pipeline Company, Overthrust Pipeline Company, and Questar Southern Trails Pipeline Company
TS04–71, 000, PPL Electric Utilities
TS04–152, 000, Saltville Gas Storage Company LLC
TS04–273, 000, Shell Offshore Inc. and Shell Gulf of Mexico
TS04–274, 000, Shell Gas Transmission, LLC
TS04–222, 000, Southwest Gas Transmission Company
TS04–253, 000, Texas Gas Transmission LLC
TS04–212, 000, Viking Gas Transmission Co.
TS04–260, 000, Williston Basin Interstate Pipeline Co.

E–34.
Omitted

E–35.
Docket# EL04–90, 000, Nevada Power Company

E–36.
Omitted

E–37.
Docket# ER01–2536, 005, New York Independent System Operator, Inc.

E–38.
Docket# EL04–71, 000, Empire District Electric Company

E–39.
Docket# PL04–5, 000, Policy Statement on Matters Related To Bulk Power System Reliability

E–40.
Omitted

E–41.
Omitted

E–42.
Docket# EL99–14, 000, Southwestern Electric Cooperative, Inc. v. Soyland Power Cooperative, Inc.
Other#s EL99–14, 005, Southwestern Electric Cooperative, Inc. v. Soyland Power Cooperative, Inc.

E–43.
Docket# ER03–1247, 003, Northeast Utilities Service Company

E–44.
Docket# ER03–31, 005, United Illuminating Company

E–45.
Docket# ER03–549, 000, Southern California Edison Company
Other#s ER03–549, 001, Southern California Edison Company
ER03–549, 002, Southern California Edison Company

E–46.
Docket# ER04–109, 000, Pacific Gas and Electric Company
EL04–37, 000, Pacific Gas and Electric Company

E–47.
Docket# ER04–55, 000, Maine Yankee Atomic Power Company

E–48.
Docket# ER04–653, 002, PJM Interconnection, LLC

E–49.
Docket# EC02–113, 001, Cinergy Services, Inc., on behalf of PSI Energy, Inc., CinCap Madison, LLC and CinCap VII, LLC

E–50.
Docket# EL03–219, 001, Central Iowa Power Cooperative, Clarke Electric Cooperative, Inc., Consumers Energy Cooperative, East-Central Iowa Rural Electric Cooperative, Eastern Iowa Light & Power Cooperative, Farmers Electric Cooperative, Inc., Guthrie County Rural Electric Cooperative Association, Maquoketa Valley Electric Cooperative, Midland Power Cooperative, Pella Cooperative Electric Association, Rideta Electric Cooperative Inc., South Iowa Municipal Electric Cooperative Association, Southwest Iowa Service Cooperative, and T.I.P. Rural Electric Cooperative

E–51.
Omitted

E–52.
Docket# EL03–53, 001, Gregory Swecker v. Midland Power Cooperative

E–53.
Docket# EL04–51, 001, InterGen Services, Inc. on behalf Of Cottonwood Energy Company, LP v. Entergy Services, Inc. and Entergy Gulf States, Inc.

E–54.
Omitted

E–55.
Docket# ER01–2998, 004, Pacific Gas and Electric Company
Other#s
ER02–358, 004, Pacific Gas and Electric Company
EL02–64, 004, Northern California Power Agency v. Pacific Gas and Electric Company and The California Independent System Operator Corporation

E–56.
Docket# ER01–890, 006, Boston Edison Company
Other#s
ER01–890, 007, Boston Edison Company
ER02–1465, 003, Boston Edison Company
ER02–1465, 004, Boston Edison Company

E–57.
Docket# ER02–1333, 001, PJM Interconnection, LLC

E–58.
Docket# ER02–2463, 002, ISO New England, Inc.
Other#s ER02–2463, 003, ISO New England, Inc.

E–59.
Docket# ER02–851, 004, Southern Company Services, Inc.
Other#s ER02–851, 012, Southern Company Services, Inc.

E–60.
Docket# ER04–335, 003, New England Power Pool

E–61.
Docket# ER04–337, 004, Pacific Gas and Electric Company

E–62.
Docket# ER04–499, 001, American Electric Power Service Corporation
Other#s ER04–499, 002, American Electric Power Service Corporation

E–63.
Docket# ER04–608, 001, PJM Interconnection, LLC

E–64.
Docket# ER04–714, 002, Florida Power & Light Company—New England Division
Other#s ER04–157, 006, Bangor Hydro-Electric Company, Central Maine Power Company, NSTAR Electric & Gas Corporation, New England Power Company, Northeast Utilities Service Company, The United Illuminating Company, and Vermont Electric Power Company

E–65.
Docket# ER04–742, 001, PJM Interconnection, LLC

E–66.
Docket# QF86–681, 006, Ormesa LLC

E–67.
Docket# EL03–152, 000, Duke Energy Trading and Marketing Company

E–68.
Docket# ER96–2495, 020, AEP Power Marketing, Inc.
Other#s ER97–4143, 008, AEP Service Corporation;
ER97–1238, 015, CSW Power Marketing, Inc.;
ER98–2075, 014, CSW Energy Services, Inc.;
ER98–542, 010, Central and South West Services, Inc.;
EL04–131, 000, Central and South West Services, Inc.

E–69.
Docket# ER99–2326, 006, Pacific Gas and Electric Company
Other#s ER99–68, 006, Pacific Gas and Electric Company

E–70.
Docket# EL03–159, 000, Modesto Irrigation District

E–71.
Docket# ER97–4166, 015, Southern Company Energy Marketing, Inc.
Other#s EL04–124, 000, Southern Company Energy Marketing, Inc.

E–72.
Docket# ER91–569, 023, Entergy Services, Inc.
Other#s EL04–123, 000, Entergy Services, Inc.

E–73.
Docket# ER04–132, 000, Wolverine Power Supply Cooperative, Inc.
Other#s EL04–38, 000, Wolverine Power Supply Cooperative, Inc.

E–74.
Docket# EL02–123, 003, Boston Edison Company

Other#s EL02–123, 004, Boston Edison Company
E–75.
Docket# ER01–989, 002, Green Mountain Power Corporation
Other#s ER01–989, 003, Green Mountain Power Corporation
E–76 Docket# ER04–435, 002, Southern California Edison Company
Other#s ER04–435, 004, Southern California Edison Company

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP98–18, 015, Iroquois Gas Transmission System, L.P.
G–2.
Docket# PR04–12, 000, National Fuel Gas Distribution Corporation
G–3.
Docket# RP04–269, 000, Black Marlin Pipeline Company
Other#s RP04–269, 001, Black Marlin Pipeline Company
G–4.
Docket# RP02–361, 028, Gulfstream Natural Gas System, L.L.C.
G–5.
Docket# RP03–398, 009, Northern Natural Gas Company
G–6.
Docket# RP04–188, 003, Great Lakes Gas Transmission Limited Partnership
G–7.
Omitted
G–8.
Omitted
G–9.
Docket# RP04–217, 000, Calpine Energy Services, LP v. Gas Transmission Northwest Corporation
G–10.
Docket# RP04–281, 001, Northern Natural Gas Company

Energy Projects—Hydro

H–1.
Omitted
H–2.
Docket# P–2000, 053, New York Power Authority
Other#s EL03–224, 003, Massachusetts Municipal Wholesale Electric Company v. New York Power Authority
H–3.
Docket# P–1971, 090, Idaho Power Company
H–4.
Docket# P–2612, 015, FPL Energy Maine Hydro LLC
H–5.
Docket# P–77, 121, Pacific Gas and Electric Company
H–6.
Docket# P–2210, 106, Appalachian Power Company
H–7.
Docket# P–2232, 449, Duke Energy Corporation

Energy Projects—Certificates

C–1.
Docket# CP04–346, 000, CenterPoint Energy—Mississippi River Transmission Corporation
C–2.
Docket# CP04–64, 000, Trunkline Gas Company, LLC
Other#s CP02–60, 004, Trunkline LNG Company, LLC
C–3.
Docket# CP04–55, 000, Northwest Pipeline Corporation and Terasen Sumas, Inc.
Other#s CP04–56, 000, Terasen Sumas, Inc.
C–4.
Omitted
C–5.
Docket# CP03–75, 001, Freeport LNG Development, L.P.
C–6.
Docket# CP02–396, 008, Greenbrier Pipeline Company, L.L.C.
C–7.
Docket# CP04–121, 001, El Paso Natural Gas Company

Magalie R. Salas,

Secretary.

The Capitol Connection offers the opportunity for remote listening and viewing of the meeting. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on "FERC".

[FR Doc. 04–20821 Filed 9–10–04; 3:41 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

September 8, 2004.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: September 15, 2004. (Within a relatively short time after the Commission's open meeting on September 15.)

PLACE: Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries, Enforcement Related Matters, and Security of Regulated Facilities.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, telephone (202) 502–8400.

Chairman Wood and Commissioners Brownell, Kelliher, and Kelly voted to hold a closed meeting on September 15, 2004. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 04–20822 Filed 9–10–04; 3:42 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Parker-Davis Project—Rate Order No. WAPA–113

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of order extending the firm electric service and transmission services rate methodologies.

SUMMARY: This action is to extend the existing Parker-Davis Project (P–DP) firm electric service rate schedule PD–F6, and the transmission service rate schedules PD–FT6, PD–FCT6, and PD–NFT6 through September 30, 2006. Without this action, the existing rate methodologies will expire on September 30, 2004, and no rate methodologies will be in effect for these services.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2442, or e-mail *jmurray@wapa.gov*.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 00–037.00 approved December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission.

The existing rate methodologies contained within Rate Order No.

WAPA–75 were approved for 5 years and extended through September 30, 2004.

Western is currently evaluating methodologies and conducting a public process proposing a Multi-System Transmission Rate for cost recovery purposes for the P–DP, the Pacific Northwest-Pacific Southwest Intertie Project, and the Central Arizona Project. The public process may determine transmission rate methodologies that will supersede rate schedules PD–FT6, PD–FCT6, and PD–NFT6. Rate schedule PD–F6 for firm electric service may need modification to adapt to changes in the transmission rate methodology. Therefore, Western believes it is premature to proceed with a formal rate process for these rate schedules at this time, making it necessary to extend the current rate methodologies under 10 CFR 903. Upon its approval, Rate Order No. WAPA–75, previously extended under Rate Order No. WAPA–98, will be extended under Rate Order No. WAPA–113.

Following review of Western's proposal within the DOE, I hereby approve Rate Order No. WAPA–113, which extends the existing P–DP firm electric service and transmission services rate methodologies through September 30, 2006.

Dated: September 2, 2004.

Kyle E. McSlarrow,

Deputy Secretary.

Department of Energy, Deputy Secretary

[Rate Order No. WAPA–113]

In the matter of: Western Area Power Administration Rate Extension for Firm Electric Service And Transmission Services Rate Methodologies; Order Confirming and Approving an Extension of the Parker-Davis Project Firm Electric Service and Transmission Services Rate Methodologies

These service rate methodologies were established following section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy (Secretary) the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project system involved.

By Delegation Order No. 00–037.00 approved December 6, 2001, the Secretary delegated: (1) The authority to develop power and transmission rates on a non-exclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission.

Background

The existing rate methodologies contained within Rate Order No. WAPA–75 were approved for 5 years beginning on November 1, 1997. By Rate Order No. WAPA–98, the rate was extended for 2 years through September 30, 2004.

Discussion

Western is currently evaluating methodologies and conducting a public process proposing a Multi-System Transmission Rate (MSTR) for cost recovery purposes for the Parker-Davis Project, the Pacific Northwest-Pacific Southwest Intertie Project, and the Central Arizona Project, which will replace the current P–DP transmission rate methodologies. The firm electric service rate methodology may need modification to adapt to changes in the transmission rate methodology. Western believes it is premature to proceed with a formal rate process for P–DP at this time making it necessary to extend the current rate methodologies under 10 CFR 903. Upon its approval, Rate Order No. WAPA–75, previously extended under Rate Order 98, will be extended under Rate Order No. WAPA–113 for a 2-year period through September 30, 2006.

Order

In view of the above and under the authority delegated to me by the Secretary, I hereby extend the existing firm electric service rate schedule PD–F6 and transmission service rate schedules PD–FT6, PD–FCT6, and PD–NFT6. These existing rate schedules shall remain in effect through September 30, 2006.

Dated: September 2, 2004.

Kyle E. McSlarrow,

Deputy Secretary.

[FR Doc. 04–20670 Filed 9–13–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Numbers OECA–2004–0040, OECA–2004–0035, OECA–2004–0042, OECA–2004–0039 and OECA–2004–0032, FRL–7812–7]

Agency Information Collection Activities: Request for Comments on Five Proposed Information Collection Requests (ICRs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following five existing, approved, continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB) for the purpose of renewing the ICRs. Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described under **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be submitted on or before November 15, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier service. Follow the detailed instructions as provided under **SUPPLEMENTARY INFORMATION,** section I. B.

FOR FURTHER INFORMATION CONTACT: The contact individuals for each ICR are listed under **SUPPLEMENTARY INFORMATION,** section II. C.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Background

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

(3) Enhance the quality, utility, and clarity of the information to be collected.

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology,

e.g., permitting electronic submission of responses.

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.

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 standards are displayed at 40 CFR part 9.

B. Public Dockets

EPA has established official public dockets for the ICRs listed under **SUPPLEMENTARY INFORMATION**, section II. B. The official public docket for each ICR consists of the documents specifically referenced in the ICR, any public comments received, and other information related to each ICR. The official public docket for each ICR is the collection of materials that is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is (202) 566–1514. An electronic version of the public docket for each ICR is available through EPA Dockets (EDOCKET) at: *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, to submit or to view public comments, to access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to the listed ICRs above 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, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

II. ICRs To Be Renewed

A. For All ICRs

The listed ICRs address Clean Air Act information collection requirements in standards (*i.e.*, regulations) which have mandatory recordkeeping and reporting requirements. Records collected under the New Source Performance Standards (NSPS) must be retained by the owner or operator for at least two years and the records collected under the National Emission Standards for Hazardous Air Pollutants (NESHAP) must be retained by the owner or operator for at least five years. In general, the required collections consist of emissions data and other information deemed not to be private.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved Information Collection Requests (ICRs) listed in this notice. Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of the Paperwork Reduction Act.

B. List of ICRs Planned To Be Submitted

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following five continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) NSPS for Municipal Waste Combustors (40 CFR part 60, subpart Ea and Eb); Docket ID Number OECA–2004–0040; EPA ICR Number 1506.10; OMB Control Number 2060–0210; expiration date April 30, 2005.

(2) NESHAP for Marine Tank Vessel Loading Operations (40 CFR part 63, subpart Y); Docket ID Number OECA–2004–0035; EPA Preliminary ICR Number 1679.05; OMB Control Number 2060–0289; expiration date May 31, 2005.

(3) NESHAP for Coke Oven Batteries (40 CFR part 63, subpart L); Docket ID Number OECA–2004–0042; EPA ICR Number 1362.05; OMB Control Number 2060–0253; expiration date May 31, 2005.

(4) NESHAP for Primary Copper Smelters (40 CFR part 63, subpart QQQ); Docket ID Number OECA–2004–0039; EPA ICR Number 1850.04; OMB Control Number 2060–0476; expiration date May 31, 2005.

(5) NESHAP for Leather Finishing Operations (40 CFR part 63, subpart TTTT); Docket ID Number OECA–2004–0032; EPA ICR Number 1985.03; OMB Control Number 2060–0478; expiration date June 30, 2005.

C. Contact Individuals for ICRs

(1) NSPS for Municipal Waste Combustors (40 CFR part 60, subpart Ea and Eb); Learia Williams of the Office of Compliance at (202) 564–4113 or via e-mail to: *williams.learia@epa.gov;* EPA ICR Number 1505.10; OMB Control Number 2060–0210; expiration date April 30, 2005.

(2) NESHAP for Marine Tank Vessel Loading Operations (40 CFR part 63, subpart Y); Dan Chadwick of the Office of Compliance at (202) 564–7054 or via e-mail to: *chadwick.dan@epa.gov;* EPA ICR Number 1679.05; OMB Control Number 2060–0289; expiration date May 31, 2005.

(3) NESHAP for Coke Oven Batteries (40 CFR part 63, subpart L); Maria Malave of the Office of Compliance at (202) 564–7027 or via e-mail to: *malave.maria@epa.gov;* EPA ICR Number 1362.05; OMB Control Number 2060–0253; expiration date May 31, 2005.

(4) NESHAP for Primary Copper Smelters (40 CFR part 63, subpart QQQ); Learia Williams of the Office of Compliance at (202) 564–4113 or via e-mail to: *williams.learia@epa.gov;* EPA ICR Number 1850.04; OMB Control

Number 2060–0476; expiration date May 31, 2005.

(5) NESHAP for Leather Finishing Operations (40 CFR part 63, subpart TTTT); Learia Williams of the Office of Compliance at (202) 564–4113 or via e-mail to: *williams.learia@epa.gov;* EPA ICR Number 1985.03; OMB Control Number 2060–0478; expiration date June 30, 2005.

D. Information for Individual ICRs

(1) NSPS for Municipal Waste Combustors (40 CFR part 60, subpart Ea and Eb); EPA Preliminary ICR Number 1506.10; OMB Control Number 2060–0210; expiration date April 30, 2005.

Affected Entities: Entities potentially affected by this action are Municipal Waste Combustor (MWC) units with combustion capacity greater than 225 megagrams per day (250 tons per day) of municipal solid waste.

Abstract: The New Source Performance Standards (NSPS) for the regulations published at 40 CFR part 60, subpart Ea and subpart Eb were proposed on December 20, 1980, and September 20, 1994 (respectively), and promulgated on February 11, 1991, and December 19, 1995 (respectively). Municipal waste combustor (MWC) facilities which commenced construction after December 20, 1989, and on or before September 20, 1994, or commenced modification or reconstruction after December 20, 1989, and on or before June 19, 1996, are subject to the regulations at 40 CFR part 60, subpart Ea. MWC facilities which commenced construction after September 20, 1994, or commenced modification or reconstruction after June 19, 1996 are subject to the regulations in 40 CFR part 60, subpart Eb.

The affected sources are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes or additions to the General Provisions specified at 40 CFR part 60, subparts Ea and Eb.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NSPS.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was eight with 50 responses per year. the annual industry reporting and recordkeeping burden for this collection of information was 11,885 hours. On average, each respondent reported seven times per year and 238 hours were spent preparing each response. The responses were prepared quarterly, semiannually and annually. The total annualized cost was $132,000, which was comprised of capital/startup costs of $60,000 and operation and maintenance costs of $72,000.

(2) NESHAP for Marine Tank Vessel Loading Operations (40 CFR part 63, supbart Y); Docket ID Number OECA–2004–0035; EPA Preliminary ICR Number 1679.05; OMB Control Number 2060–0289; expiration date May 31, 2005.

Affected Entities: Entities potentially affected by this action are marine tank vessel loading operations at marine terminals.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for the regulations published at 40 CFR part 63, subpart Y, were proposed on May 13, 1994, and promulgated on September 19, 1995.

The affected sources are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A and any changes or additions to the General Provisions specified at 40 CFR part 63, subpart Y. The requirements include initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Burden Statement: In the previously approved ICR, approximately 105 sources were subject to the standard and 105 responses. It was anticipated that no additional sources per year would become subject to the standard over the three-year period covered by the ICR. The annual industry reporting and recordkeeping burden for this collection of information was 28,131 hours. On average, each respondent reported one time per year and 268 hours were spent preparing each response. The responses were prepared semiannually. There were no capital/startup or operations and maintenance costs since no new sources were expected over the three-year period of the ICR.

(3) NESHAP for Coke Oven Batteries (40 CFR part 63, subpart L); EPA Preliminary ICR Number 1362.05; OMB Control Number 2060–0253; expiration date May 31, 2005.

Affected Entities: Entities potentially affected by this action are rubber tire manufacturing plants.

Abstract: The National Emissions Standard for Hazardous Air Pollutants (NESHAP) for the regulations published at 40 CFR part 60, subpart L were proposed on December 4, 1992, and promulgated on October 27, 1993. These standards apply to all coke oven batteries, whether existing, new, reconstructed, rebuilt or restarted. It also applies to all batteries using the conventional by-product recovery, the nonrecovery process, or any new recovery process.

The affected sources are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A and any changes or additions to the General Provisions specified at 40 CFR part 63, subpart L. Owners or operators of the affected facilities described must make one-time-only notifications to elect a compliance track and to certify initial compliance. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to coke oven batteries provide information on the operation of the emissions control device and compliance with the visible emissions standard. Semiannual reports of compliance certifications are required. Any owner or operator subject to the provisions of this part must maintain a file of these measurements, and retain the file for at least one year following the date of such measurements, maintenance reports, and records, and must thereafter be accessible within three working days.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 25 with 58 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 104,659 hours. On average, each respondent reported two times per year and 1,804 hours were spent preparing each response. The responses were prepared semiannually. There were no capital/startup or operation and maintenance costs over the three-year period covered by the ICR.

(4) NESHAP for Primary Copper Smelters (40 CFR part 63, subpart QQQ); EPA Preliminary ICR Number 1850.04; OMB Control Number 2060–0476; expiration date May 31, 2005.

Affected Entities: Sources potentially affected by this action are primary copper smelters.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A

and any changes or additions to the General Provisions specified at 40 CFR part 63, subpart QQQ. In addition, owners and operators subject to the rule will be required to install and operate air emission controls and meet certain work practice standards. To demonstrate initial and continuous compliance with the rule requirements, affected owners and operators collect information to meet specific monitoring, inspection, recordkeeping, and reporting requirements in the final rule. Each respondent is required to submit to the EPA a one-time notification of applicability. The respondents perform an annual performance test for each control device used to comply with the standards and submit a report following the test. Between performance tests, the respondents are required to monitor selected operating parameters indicative of the control device performance and to maintain records of the monitoring results. The respondent prepares and submits semiannually.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was six with 90 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 20,506 hours. On average, each respondent reported fourteen times per year and 228 hours were spent preparing each response. The total annualized cost was $98,000, which was comprised of capital/startup costs of $26,000 and operation and maintenance costs of $72,000.

(5) NESHAP for Leather Finishing Operations (40 CFR part 63, subpart TTTT); EPA Preliminary ICR Number 1985.03; OMB Control Number 2060–0478; expiration date June 30, 2005.

Affected Entities: Sources potentially affected by this action are leather finishing operations.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A and any changes or additions to the General Provisions specified at 40 CFR part 63, subpart TTTT. Owners or operators must submit a number of notifications and reports to demonstrate compliance with NESHAP. Each existing operation that is a major source must submit an initial notification. Any leather finishing operation that starts up after the proposal date but before promulgation must submit an initial notification, similar to the one submitted by existing sources. Each new or reconstructed source that starts up after promulgation must submit a series of notifications in addition to the initial notification which includes: notification of intent to construct or reconstruct and notification of startup. Both new and existing sources must develop a plan for demonstrating compliance which specifies procedures to measure finish amounts used, hazardous air pollutant (HAP) content of finishes, and production levels for each operation. The plan for demonstrating compliance must be completed by the compliance date and kept on the site and available for inspection.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was twelve with twelve responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 485 hours. On average, each respondent reported one time per year and 40 hours were spent preparing each response. The responses were prepared annually. There are no capital/startup costs or operation and maintenance costs associated with continuous emission monitoring in the previous ICR.

Dated: September 1, 2004.

Lisa Lund,

Acting Director, Office of Compliance.

[FR Doc. 04–20676 Filed 9–13–04; 8:45 am]

BILLING CODE 5560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2002–0009; FRL–7812–6]

RIN–2025–AA13

Privacy Act of 1974 Republication of Exempted System of Records

AGENCY: Environmental Protection Agency.

ACTION: Amendment to notice of Privacy Act system of records.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to republish two exempt Privacy Act system of records.

DATES: Comments must be received on or before October 14, 2004. The proposed amendments will be effective upon publication of final regulations.

ADDRESSES: Submit your comments, identified by Docket ID No. OEI–2002–0009, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Agency Web site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
- *Fax:* 202 566–1753.
- *Mail:* Office of Environmental Information Docket, Environmental Protection Agency, (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OEI–2002–0009. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, *http://www.regulations.gov,* or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be

publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Office of Environmental Information Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. EST, Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–1752. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Judy E. Hutt, PA Officer, Records, Privacy and FOIA Branch, Collection Strategies Division, Office of Information Collection, Office of Environmental Information (OEI), (2822T), EPA, 1200 Pennsylvania Ave, NW., Washington, DC 20460; Phone, (202) 566–1668; Fax, (202) 566–1639; *hutt.judy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, 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 claimed as CBI). In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

SUPPLEMENTARY INFORMATION: These notices are being republished after the publishing of Agency rules.

Dated: September 3, 2004.

Kimberly T. Nelson,

Assistant Administrator and Chief Information Officer.

EPA–17

SYSTEM NAME:

OCEFT Criminal Investigative Index and Files.

SYSTEM LOCATION:

Criminal Investigation Division, Office of Criminal Enforcement, Forensics and Training, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20004. Records are also maintained in field offices of the OCEFT Criminal Investigation Division. See the appendix for addresses of field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of investigations about whom data has been collected by criminal investigators of the Office of Criminal Enforcement, Forensics and Training, Criminal Investigation Division, and assembled in the form of investigative reports concerning violations of federal environmental statutes and regulations; persons who provide information and evidence that are used to substantiate environmental criminal violations are also covered by this system of records; OCEFT criminal investigators who participate in investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Investigative Index. The computer-enhanced investigative index systems contain selected information from the criminal investigative files. Such information includes, but is not limited to, personal data (*e.g.,* name, address, telephone number); prior/secondary residences; vehicle information; associated persons (name and role); driver's licenses/aliases; associated companies (name and role); identifying numbers (number type, number and brief description); corporate data (company name, address, telephone number); corporate vehicle information; corporate identifying numbers; case information (*e.g.,* case opened, date referred to EPA); criminal investigator comments; name and office of criminal investigator; dissemination information (*e.g.,* which other agency requested the information); and other related investigative information.

2. Investigative Files. The investigative files contain all information relating to an investigative matter. In addition to the information contained in the computerized index system, the investigative files contain, but are not limited to, correspondence (case coordination reports, memos of conversation, and other records of communication relating to the investigation); interviews (witness interview statements generated by either an OCEFT/CID special agent or another agency or person); regulatory history (permits and reports generated as a result of normal program activity); technical support (program reports generated as a result of the investigation); investigative notes; electronic monitoring (reports requesting permission and use, transcripts of tapes); records checks (personal history, police information, fingerprint cards, photographs); property reports; property obtained and retained by OCEFT/CID including documents, personal property and physical evidence; manifests and other related investigative information.

3. Criminal Docket. The Criminal Docket is the computerized management information system for the Criminal Investigation Division, which reflects the activity and productivity of individual agents and each OCEFT/CID office. It is also the primary source for assembling statistical data for OCEFT/CID. There is no information contained in the Criminal Docket that is not also contained in the Criminal Investigative Index and Files. The Criminal Docket contains the OCEFT/CID case number, the case name, the most recent investigative or prosecutorial activity, the involved environmental media and environmental statutes, government employees involved in the investigation, case status and case closure codes. The case name may be either a company name or the name of a person that denotes the subject of the investigation. Authority for Maintenance of the System (includes any revisions or amendments): 18 U.S.C. 3063; Comprehensive Environmental Response, Compensation and Liability

Act, 42 U.S.C. 9603; Resource Conservation and Recovery Act, 42 U.S.C. 6928; Federal Water Pollution Control Act, 33 U.S.C. 1319, 1321; Toxic Substances Control Act, 15 U.S.C. 2614, 2615; Clean Air Act, 42 U.S.C. 7413; Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136j, 136l; Safe Drinking Water Act, 42 U.S.C. 300h–2, 300i–1; Noise Control Act of 1972, 42 U.S.C. 4912; Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. 11045; and the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1415.

PURPOSE(S):

To support and further the investigation of persons or organizations alleged to have criminally violated any environmental statute or regulation. Criminal violations of other federal statutes may have occurred in conjunction with such environmental violations and, therefore, may also be within the scope of an OCEFT/CID investigation and may be included in the record system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

General Routine Uses A, C, D, E, F, G, H, and K apply to this system. Records may also be disclosed:

1. To a potential source of information to the extent necessary to elicit information or to obtain cooperation of that source in furtherance of an EPA criminal investigation.

2. To the Department of Justice for consultation about what information and records are required to be publicly released under federal law.

3. To a federal agency in response to a valid subpoena.

4. To Federal and state government agencies responsible for administering suspension and debarment programs.

5. To international law enforcement organizations if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the organization or a law enforcement agency that is a member of the organization.

6. To the news media and public unless it is determined that the release of the specific information in the context of a particular case would constitute an unwarranted invasion of privacy.

7. To any person if the EPA determines that compelling circumstances affecting human health, the environment, or property warrant the disclosure.

8. In connection with criminal prosecution or plea negotiations to the extent that disclosure of the information is relevant and necessary to the prosecution or negotiation and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Hard copy files and computer databases.

Retrievability: Files are assigned a case file number and records are maintained in numerical order. Information on individuals may be retrieved through the computer index which can use, among other things, case titles, the names of individuals, organization names, driver's license numbers, vehicle or tag or vehicle identification numbers and other identifying numbers.

Safeguards: Computer records are maintained in a secure, password protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings. The index system also maintains a user log that identifies and records persons who access and use the system.

Retention and Disposal: The manner of Retention and Disposal of the computer index and files depends on how the information is used. The files and computerized data fall into one of three categories:

1. For cases investigated but not referred to the Department of Justice (DOJ) for criminal prosecution, files are retained in the applicable OCEFT/CID office for two years after the investigation is closed and then forwarded to the Federal Records Center (FRC) nearest the System Location for an additional three years. The FRC will normally destroy the files after three years.

2. For cases referred to DOJ but DOJ declines to prosecute, files are retained by the applicable OCEFT/CID office for five years after DOJ declines to prosecute and then retired to the FRC, where they are normally destroyed after five years.

3. For cases that become the subject of judicial action, files are retained by the applicable OCEFT/CID office for five years after completion of the judicial action and then forwarded to the FRC for an additional ten years of retention. The FRC normally destroys the case files after ten years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Criminal Investigations Division, Office of Criminal Enforcement, Forensics and Training, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20004.

NOTIFICATION PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification procedures may be required in some instances.

ACCESS PROCEDURE:

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(j)(2) or (k)(2), this system has been exempted from the provisions of the Privacy Act of 1974 that permit access and correction. Exemptions from access may be complete or partial, depending on the particular exemption applicable. However, EPA may, in its discretion, grant individual requests for access and correction if it determines that the exercise of these rights will not interfere with an interest that the exemption is intended to protect.

CONTESTING PROCEDURE:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are set out in 40 CFR part 16.

RECORD SOURCE CATEGORIES:

EPA employees and officials; employees of Federal contractors; employees of other Federal agencies and of State, local, tribal, and foreign agencies; witnesses; informants; public source materials, and other persons who may have information relevant to OCEFT/CID investigations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2) this system is exempt from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f)(2) through (5); and (g). Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in that subsection: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f)(2) through (5).

BJEPA–21

SYSTEM NAME:

External Compliance Program Discrimination Complaint Files.

SYSTEM LOCATION:

Office of Civil Rights, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed, or had filed on their behalf, discrimination complaints against recipients of Federal financial assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters or other documents initiating discrimination complaints, correspondence, internal memoranda and notes pertaining to the complaints; investigative reports and findings on the complaints; and related information concerning the complaints and investigations. A computerized case index includes cases by number, complainant (but not all complainants are identified because there are sometimes multiple complainants in a single case), and recipient.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM (INCLUDES ANY REVISIONS OR AMENDMENTS):

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500, section 13), 33 U.S.C.1251 note; Title III of the Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*); Title VIII of the Federal Fair Housing Act (42 U.S.C. 3601); Executive Orders 11246 (Sept. 24, 1965), 12250 (Nov. 2, 1980) and 12892 (Jan. 17, 1994); 40 CFR part 7.

PURPOSE(S):

This file system is maintained to support and further the discrimination complaint process, including the investigation and resolution of complaints, and to assure compliance with the nondiscrimination laws by recipients of Federal financial assistance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

General Routine Uses A, C, D, E, F, G, H, I, and K apply to this system. Records may also be disclosed:

1. To the Department of Justice or other Federal and State agencies when necessary to complete an investigation, enforce the nondiscrimination statutes set forth in the Authority section of this Notice, or assure proper coordination between Federal agencies.

2. To persons named as alleged discriminating officials to allow such persons the opportunity to respond to the allegations of discrimination made against them during the course of the discrimination complaint process.

3. To any potential source of information when necessary to obtain information relevant to an OCR investigation of a discrimination complaint, but only to the extent necessary to inform the source of the Purpose(s) of the request and to identify the type of information requested.

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:

Storage: File folders. An index of cases is maintained on a computer database.

Retrievability: By name, case file number, or other characteristic.

Safeguards: Computer records are maintained in a secure, password protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

Retention and Disposal: The record schedule for these records is currently under review and will be submitted to the National Archives and Records Administration. Proposed retention: Files are retained in the office for one year after the final decision is written, sent to the Federal Records Center for nine years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Complaints Resolution and External Compliance Staff, Office of Civil Rights, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

NOTIFICATION PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager.

ACCESS PROCEDURE:

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(k)(2), this system has been exempted from the provisions of the Privacy Act of 1974 that permit access and correction. However, EPA may, in its discretion, fully grant individual requests for access and correction if it determines that the exercise of these rights will not interfere with an interest that the exemption is intended to protect. The exemption from access is limited in some instances by law to information that would reveal the identity of a confidential source. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification procedures may be required in some instances.

CONTESTING PROCEDURE:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are set out in 40 CFR part 16.

RECORD SOURCE CATEGORIES:

Complainants, recipients, witnesses, EPA investigators and/or contract investigators, other EPA personnel, and other persons with information relevant to the case.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act of 1974, subject to the limitations set forth in that subsection: 5 U.S.C. 552a(c)(3), (d), and (e)(1).

[FR Doc. 04–20677 Filed 9–13–04; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

DATE AND TIME: Friday, September 17, 2004, 10 a.m. Eastern Time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Announcement of Notation Votes, and
2. Obligation of Funds for EEOC National Contact Center.

Note: In accordance with the Sunshine Act, this meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any

time for information on these meetings. *Contact Person For More Information:* Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

Dated: September 10, 2004.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 04–20792 Filed 9–10–04; 1:53 pm]

BILLING CODE 6750–06–M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration; Notice of Meeting of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction

ACTION: Notice.

SUMMARY: The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction ("Commission") will meet in closed session on Wednesday, September 29, 2004, and Thursday, September 30, 2004, in its offices in Arlington, Virginia.

Executive Order 13328 established the Commission for the purpose of assessing whether the Intelligence Community is sufficiently authorized, organized, equipped, trained, and resourced to identify and warn in a timely manner of, and to support the United States Government's efforts to respond to, the development of Weapons of Mass Destruction, related means of delivery, and other related threats of the 21st Century. This meeting will consist of briefings and discussions involving classified matters of national security, including classified briefings from representatives of agencies within the Intelligence Community; Commission discussions based upon the content of classified intelligence documents the Commission has received from agencies within the Intelligence Community; and presentations concerning the United States' intelligence capabilities that are based upon classified information. While the Commission does not concede that it is subject to the requirements of the Federal Advisory Committee Act (FACA), 5 United States Code Appendix 2, it has been determined that the September 29–30 meeting would fall within the scope of exceptions (c)(1) and (c)(9)(B) of the Sunshine Act, 5 United States Code, Sections 552b(c)(1) & (c)(9)(B), and thus could be closed to the public if FACA did apply to the Commission.

DATES: Wednesday, September 29, 2004 (9 a.m. to 5 p.m.) and Thursday, September 30, 2004. (9 a.m. to 2 p.m.).

ADDRESSES: Members of the public who wish to submit a written statement to the Commission are invited to do so by facsimile at (703) 414–1203, or by mail at the following address: Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, Washington, DC, 20503. Comments also may be sent to the Commission by e-mail at *comments@wmd.gov.*

FOR FURTHER INFORMATION: Contact Brett C. Gerry, Associate General Counsel, Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, by facsimile, or by telephone at (703) 414–1200.

Victor E. Bernson, Jr.,

Executive Office of the President, Office of Administration, General Counsel.

[FR Doc. 04–20764 Filed 9–13–04; 8:45 am]

BILLING CODE 3130–W4–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 7, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before October 14, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0654.

Title: Application for a Multipoint Distribution Service Authorization.

Form No.: FCC Form 304.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 200.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 200 hours.

Total Annual Cost: $604,000.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: FCC Form 304 is used by existing Multipoint Distribution (MDS) operators to modify their stations or to add a signal booster station. It is also used by some winning bidders in the competitive bidding process to propose facilities to provide wireless cable service over any usable MDS channels within their Basic Trading Area (BTA). This collection of information also includes the burden for the technical rules involving the interference or engineering analysis and service requirements under Sections 21.902, 21.913, and 21.938. These analyses will not be submitted with the application but will be retained by the operator and must be made available to the Commission upon request. The data is used by FCC staff to ensure that the applicant is legally, technically and otherwise qualified to become a Commission licensee. MDS/Instructional Television Fixed Service (ITFS) applicants/licensees will need this information to perform the necessary analyses of the potential for harmful interference to their facility.

The Commission is now revising this form to request additional information

to complete the Universal Licensing Service (ULS) data elements since MDS/ITFS has been implemented into ULS. Additional information such as the licensee's email address, fax number, type of applicant, contact's email address and fax number will be added to this form. The Commission is also clarifying data elements, instructions and correction of mailing addresses and Web sites. The increase in the annual cost burden is due to hourly wage and fees within the past three years.

OMB Control Number: 3060–0664.

Title: Certification of Completion of Construction for Multipoint Distribution Service (MDS) Station.

Form No.: FCC Form 304A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 200.

Estimated Time per Response: .50 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 100 hours.

Total Annual Cost: Not applicable.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: FCC Form 304A is used to certify that the facilities authorized in the FCC Form 304 have been completed and that the station is now operational and ready to provide service to the public. Each licensee must specify as a condition that upon the completion of construction, the licensee file with the Commission a FCC Form 304A, certifying that the facilities as authorized have been completed, the station is operational, and ready to provide service to the public. The conditional license shall be automatically forfeited upon the expiration of the construction period specified in the license within five days after the date an FCC Form 304A has been filed with the Commission.

The Commission is now revising FCC Form 304A to request additional information to complete the Universal Licensing System (ULS) data elements since Multipoint Distribution Service (MDS)/Instructional Television Fixed System (ITFS) has been implemented into ULS. Additional information such as the licensee's email address, fax number, type of applicant, contact's email address and fax number will be added to this collection. The Commission is also clarifying data elements, instructions, and corrections of mailing addresses and Web sites. The decrease in burden hours and costs are due to the decrease in the number of applications estimated to be filed with the Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–20702 Filed 9–13–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 31, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before November 15, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0799.

Title: FCC Ownership Disclosure Information for the Wireless Telecommunications Services.

Form No.: FCC Form 602.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and State, local, or tribal government.

Number of Respondents: 3,565.

Estimated Time per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirement, and third party disclosure requirement.

Total Annual Burden: 3,565 hours.

Total Annual Cost: $534,900.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The FCC Form 602 is being revised to request information from cellular filers reporting cellular cross-ownership holdings required pursuant to section 1.919 of the Commission's rules. The data collected on this form include the FCC Registration Numbers for the filer, any related FCC regulated businesses of the filer, disclosable interest holders, and any related FCC regulated businesses of disclosable interest holders. These data elements will not be displayed to the public. FCC Form 602 consists of a main form and associated schedule(s) for technical information.

There are changes to the estimated average burden and number of respondents.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–20703 Filed 9–13–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 31, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the

Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 14, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0972.

Title: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers.

Form Nos.: FCC Forms 507, 508 and 509.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 1,300 respondents; 5,200 responses.

Estimated Time Per Response: 1–90 hours.

Frequency of Response: Annual, quarterly, and one-time reporting requirements and third party disclosure requirement.

Total Annual Burden: 31,607 hours.

Total Annual Cost: $45,195.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: The Commission adopted and released a Report and Order in CC Docket No. 00–256 and CC Docket No. 96–45 (FCC 04–31) in which it took additional steps to provide rate-of-return carriers greater flexibility to respond to changing marketplace conditions. The Commission revised its access and universal service rules by (1) modifying the "all-or-nothing" rule to permit rate-of-return carriers to bring recently acquired price cap lines back to rate-of-return regulation; (2) granting rate-of-return carriers the authority immediately to provide geographically de-averaged transport and special access rates, subject to certain limitations; and (3) merging Long Term Support (LTS) with Interstate Common Line Support (ICLS).

OMB Control No.: 3060–XXXX.

Title: Allocation and Service Rules for the 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands, WT Docket No. 02–146, Report and Order.

Form No.: Not applicable.

Type of Review: New collection.

Respondents: Business or other for-profit, not-for-profit institutions and State, local or tribal government.

Number of Respondents: 1,000.

Estimated Time Per Response: 1–3 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 10,000 hours.

Total Annual Cost: $1,800,000.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: The Commission issued a Report and Order in WT Docket No. 02–146 (FCC 03–248) in which final service rules to promote the private sector development and use of the Millimeter Wave spectrum in the 71–76 GHz, 81–86 GHz, and 92–95 GHz bands on a shared basis with Federal Government operations. These bands are essentially undeveloped and available for use in a broad range of new products and services, including high-speed, point-to-point wireless local area networks and broadband Internet access. Highly directional, "pencil-beam" signal characteristics permit systems in these bands to be engineered in close proximity to one another without causing interference. This new information collection contains reporting, recordkeeping and third party disclosure requirements subject to OMB review and approval.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–20704 Filed 9–13–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 8, 2004.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Town Center Holdings, Inc., Coppell, Texas, and *Town Center Holdings Delaware, Inc.*, Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of Town Center Bank, Coppell, Texas (de novo).

Board of Governors of the Federal Reserve System, September 8, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–20638 Filed 9–13–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 p.m., Monday, September 20, 2004.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, September 10, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–20780 Filed 9–10–04; 12:57 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–6027–N]

Medicare Program; September 30, 2004 Open Door Forum: Requirements for Coordination Between Plans Primary or Secondary to Medicare Part D Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA)

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

ACTION: Notice.

SUMMARY: This notice announces a September 30, 2004 Open Door Forum for the purpose of discussing the establishment of requirements of benefit coordination among Medicare Part D plans, State Pharmaceutical Assistance Programs (SPAPs), States, pharmaceutical benefit managers, employers, data processing experts, pharmacists, pharmaceutical manufacturers, and other interested and affected parties (or customers and partners). This Forum will enable interested parties to comment and raise issues regarding requirements for enrollment file-sharing, claims processing, claims reconciliation reports, application of the catastrophic out-of-pocket protection under Section 1860D–2(b)(4) and other administrative procedures under the provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173). Interested parties will also have the opportunity to ask questions and raise issues regarding the potential paperwork burden that these MMA provisions may impose. The MMA requires that these requirements be established before July 1, 2005.

DATES: The Open Door Forum is scheduled for September 30, 2004, from 2 p.m. to 4 p.m., e.d.t.

ADDRESSES: The Open Door Forum will be held in the Centers for Medicare & Medicaid Services (CMS) Multipurpose Room, located at 7500 Security Boulevard, Baltimore, MD 21244. Please note that meeting space is limited to 250 persons. However, a phone line will be available for those who wish to call in for the meeting. Please check the Open Door Forum Web site for call-in information at *http://www.cms.hhs.gov/opendoor/* or contact Sabrina Lopez at 410–786–6884.

Written Statements and Requests: We will accept written questions about meeting logistics or requests for meeting materials either before the meeting or up to 14 days after the meeting. Written submissions must be sent to: Troop, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C3–14–16, Baltimore, MD 21244.

Public Comments: Public comments must be sent to: Troop, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C3–14–16, Baltimore, MD 21244.

Web site: Additional details and materials regarding the Open Door Forum meeting and process, along with information on how to register, will be posted before the first meeting date on the official CMS Open Door Forum Web site: *http://www.cms.hhs.gov/opendoor/*.

FOR FURTHER INFORMATION CONTACT: Sabrina Lopez, (410) 786–6884.

SUPPLEMENTARY INFORMATION:

I. Background

On November 20, 2003, the Congress passed the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) (Pub. L. 108–173), which amended Title XVIII of the Social Security Act (the Act) and established the provisions of sections 1860D–23 and 1860D–24 of the Act.

Section 1860D–23 of the Act mandates requirements that ensure effective coordination between Medicare Part D plans (private prescription drug plans (PDPs) and Medicare Advantage prescription drug plans (MA–PDs)) and State Pharmaceutical Assistance Programs (SPAPs). Section 1860D–24 of the Act applies the 1860D–23 requirements to other types of plans, including, but not limited to, Medicaid plans, group health plans, Federal Employee Health Benefit Plans (FEHBPs), and military plans (such as Tricare).

The Secretary is required, when developing these requirements, to consult with State programs, the PDP sponsors, MA–PD organizations, States, pharmaceutical benefit managers, employers, data processing experts, pharmacists, pharmaceutical manufacturers, and other experts.

II. Registration

Registration Procedures: Individuals must register in advance of attending the Open Door Forum by sending an e-mail (containing the individual's name, company name, company address, telephone number, fax number, e-mail address, and special needs information) to the following address: *specialodf@cms.hhs.gov*, or contact Sabrina Lopez at 410–786–6884. Individuals must register by September 24, 2004.

III. Comment Format

Individuals may submit comments or questions in advance of the Open Door Forum to *Troop@cms.hhs.gov* by September 24, 2004. Comments or questions may also be submitted at the Forum if not available at the time of deadline.

Both in-person participants and those participating by telephone will be given an opportunity to participate. Comments and input will be sought from the attendees on an individual basis and not from the group as a whole.

Time for participants to comment and ask questions may be limited according to the number of registered participants. We will attempt to accommodate as many participants as possible that may wish to participate.

IV. General Information

The Open Door Forum will be held in a Federal government building; therefore, Federal measures are applicable.

In planning your arrival time, we recommend allowing additional time to clear security. In order to gain access to the building and grounds, participants must bring a government issued photo identification. Access may be denied to persons without proper identification.

Security measures also include inspection of vehicles, inside and out, at the entrance to the grounds. In addition, all persons entering the building must pass through a metal detector. All items brought to CMS, whether personal or for the purpose of demonstration or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation.

Please note that smoking is not permitted anywhere on the CMS single site campus.

Special Accommodations: Persons attending the meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance or accommodations, must provide this information upon registering for the meeting.

Authority: Sections 1860D–23, 1860D–24, and 1860D–2 of the Social Security Act, as amended by the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) (Pub. L. 108–173)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 8, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–20689 Filed 9–13–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority for Region II

This Notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration for Children and Families (ACF) as follows: Chapter KD, the Regional Offices of the Administration for Children and Families for: Region II, as last amended (68 FR 65291–65303) November 19, 2003. This Notice announces the restructuring of the Office of State and Youth Programs. The Office is comprised of three Divisions: Self-Sufficiency Programs Division, Child Support Enforcement Division and Youth and Family Services Division which are headed by Program Managers who report directly to the Regional Administrator; this eliminates the Assistant Regional Administrator's position. In addition, the Office of Early Childhood Programs renamed their two Divisions: Head Start Division A; and Head Start Division B.

I. Chapter KD is amended as follows:

Region II, New York Office of ACF

A. Delete KD2.20 Functions, Paragraph C, in its entirety and replace with the following:

C. The Office of State and Youth Programs is comprised of three Divisions: Self-Sufficiency Programs Division; Child Support Enforcement Division and Youth and Family Services Division. The Divisions are headed by Program Managers who report directly to the Regional Administrator. The Office of State and Youth Programs is responsible for providing centralized program, financial management and technical administration of certain ACF formula, entitlement, block and discretionary programs, such as Temporary Assistance for Needy Families (TANF), Child Care Development Fund, Child Support, Child Welfare, Foster Care and Adoption Assistance, Child Abuse and Neglect, and Runaway and Homeless Youth.

The Office represents the Regional Administrator in dealing with the ACF central office, states and grantees on all program and financial management policy matters for programs under its jurisdiction. It alerts the Regional Administrator to problems or issues that have significant implications for the programs.

B. Delete KD2.20 Functions, Paragraph D, in its entirety and replace with the following:

D. The Office of Early Childhood Programs is headed by an Assistant Regional Administrator who reports to the Regional Administrator and consists of: Head Start Division A; and Head Start Division B.

The Office is responsible for providing a centralized program, financial management and technical administration of certain ACF formula, entitlement, and discretionary programs, such as Head Start and Early Head Start Programs, and Developmental Disabilities.

The Office represents the Regional Administrator in dealing with ACF central office, states and grantees on all program and financial management policy matters for programs under its jurisdiction. It alerts the Regional Administrator to problems or issues that have significant implications for the programs.

Dated: September 2, 2004.

Wade F. Horn,

Assistant Secretary for Children and Families.

[FR Doc. 04–20694 Filed 9–13–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the OMB for review under the Paperwork Reduction Act of 1995:

Proposed Project: Ryan White Comprehensive AIDS Resources Emergency (CARE) Act: CARE Act Data Report (CADR) Form: (OMB No. 0915–0253)—Revision

The CADR form was created in 1999 by HRSA's HIV/AIDS Bureau. It is designed to collect information from grantees and their subcontracted service providers, who are funded under Titles I, II, III, and IV of the Ryan White CARE Act of 1990, as amended by the Ryan White CARE Amendments of 1996 and 2000 (codified under Title XXVI of the Public Health Service Act). All Titles of the CARE Act specify HRSA's responsibilities in the administration of grant funds, the allocation of funds, the evaluation of programs for the population served, and the improvement of the quantity and quality of care. Accurate records of the

providers receiving CARE Act funding, the services provided, and the clients served continue to be critical to the implementation of the legislation and thus are necessary for HRSA to fulfill its responsibilities. CARE Act grantees are required to report aggregate data to HRSA annually. The CADR form is used by grantees and their subcontracted service providers to report data on seven different areas: service provider information, client information, counseling and testing services, medical services and other services provided, clients served. demographic information, and the Health Insurance Program. The primary purposes of the CADR are to: (1) Characterize the organizations from which clients receive services; (2) provide information on the number and characteristics of clients who receive CARE Act services; and, (3) enable HAB to describe the type and amount of services a client receives. In addition to meeting the goal of accountability to the Congress, clients, advocacy groups, and the general public, information collected on the CADR is critical for HRSA, State, and local grantees, and individual providers to assess the status of existing HIV-related service delivery systems.

The burden estimate for grantees is as follows:

Grantees funded by Title	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Title I only	51	1	51	40	2,040
Title II only	59	1	59	40	2,360
Title III only	365	1	365	20	7,300
Title IV only	90	1	90	20	1,800
Subtotal	565				13,500

The burden estimate for service providers is as follows:

Service providers by grantee funding	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Title I only	976	1	976	26	25,376
Title II only	857	1	857	26	22,282
Title III only	166	1	166	44	7,304
Title IV only	122	1	122	42	5,124
Multiple Titles	681	1	681	50	34,050
Subtotal	2,802	1			94,136
Total	3,367				107,636

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Desk Officer, Health Resources and Services Administration, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 8, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–20620 Filed 9–13–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; The Multi-Ethnic Study of Atherosclerosis (MESA)

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 21, 2004, pages 34375–34376, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: The Multi-Ethnic Study of Atherosclerosis. *Type of Information Collection Request:* Reinstatement of a currently approved collection (OMB No. 0925–0493). *Need and Use of Information Collection:* This study will identify and quantify factors associated with the presence and progression of subclinical cardiovascular disease (CVD)—that is, atherosclerosis and other forms of CVD that have not produced signs and symptoms. The findings will provide important information on subclinical CVD in individuals of different ethnic backgrounds and provide information for studies on new interventions to prevent CVD. The aspects of the study that concern direct participant evaluation received a clinical exemption from OMB clearance (CE–99–11–08) in April 2000. OMB clearance is being sought for the contact of physicians and participant proxies to obtain information about clinical CVD events that participants experience during the follow-up period. *Frequency of Response:* Once per CVD event. *Affected Public:* Individuals. *Type of Respondents:* Physicians and selected proxies of individuals recruited for MESA. The annual reporting burden is as follows: *Estimated Number of Respondents:* 555; *Estimated Number of*

Responses per Respondent: 1.0; Average *Burden Hours Per Response:* 0.225; and *Estimated Total Annual Burden Hours Requested:* 42. The annualized cost to respondents is estimated at $6,733. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

There are no capital operating, or maintenance costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Physicians	279	1.0	0.20	19
Participant proxies	276	1.0	0.25	23
Total	555	1.0	0.225	42

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Diane Bild, NIH, NHLBI, 6701 Rockledge Drive, MSC 7938, Bethesda, MD 20892–7934, or call non-toll-free number (301) 435–0457 or e-mail your request, including your address to: *BildD@nhlbi.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 -days of the date of this publication.

Dated: August 31, 2004.

Peter Savage,

Director, DECA, NHLBI.

[FR Doc. 04–20658 Filed 9–13–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Licensing Opportunity and/or Cooperative Research and Development Agreement ("CRADA") Opportunity: Live Attenuated Respiratory Syncytial Virus (RSV), Human Metapneumovirus (HMPV), and Parainfluenza Virus (PIV) Vaccines

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) is seeking Licensee(s) and/or a commercial collaborator(s) to further develop, test, and commercialize as live attenuated virus vaccines certain recombinant RSV, HMPV and/or PIV strains and associated intellectual property developed in the Laboratory of Infectious Diseases (LID), Division of Intramural Research, National Institute of Allergy and Infectious Diseases (NIAID).

DATES: Respondents interested in licensing the invention will be required to submit an "Application for License to Public Health Service Inventions" to NIH (attention Susan Ano, Ph.D. at the address mentioned below) on or before November 15, 2004, for priority consideration.

Potential CRADA collaborators must submit a letter summarizing their interests and capabilities to the NIAID (attention Richard K. Williams, Ph.D. at the address mentioned below) on or before November 15, 2004, for consideration. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest.

CRADA and PHS License Applications submitted thereafter may be considered if a suitable CRADA collaborator or Licensee(s) has not been selected.

FOR FURTHER INFORMATION CONTACT: Inquiries about these licensing opportunities should be addressed to Susan Ano, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 435–5515; facsimile: (301) 402–0220; e-mail: *anos@mail.nih.gov.* Information about Patent Applications and pertinent information not yet publicly described can be obtained under the terms of a Confidential Disclosure Agreement. Respondents interested in licensing the inventions will be required to submit an "Application for License to Public Health Service Inventions".

Depending upon the mutual interests of the Licensee(s) and the NIAID, a CRADA to collaborate to develop RSV, HMPV, and/or PIV vaccines in humans may also be negotiated. Proposals and questions about this CRADA opportunity should be addressed to Richard K. Williams, Ph.D., Technology Development Associate, Office of Technology Development, NIAID, 6610 Rockledge Drive, Room 4071, Bethesda, MD 20892–6606; telephone: (301) 402–0960; e-mail: *rwilliams@niaid.nih.gov.* Respondents interested in submitting a CRADA Proposal should be aware that it may be necessary to secure a license to the above-mentioned patent rights in order to commercialize products arising from a CRADA.

SUPPLEMENTARY INFORMATION: The portfolios listed below describe approaches to the development of live, attenuated vaccines for intranasal delivery against respiratory syncytial virus (RSV) subgroups A and B, human

metapneumovirus (HMPV), and three parainfluenza viruses (PIV1, –2, and –3), which account for up to 55–60% of serious respiratory tract infection in children and infants less than one year of age. Live attenuated viruses are the most promising candidate vaccines because they induce both local and systemic immunity and are efficacious even in the presence of passively transferred serum antibodies, the very situation found in the target population of infants with maternally derived antibodies.

These patents and patent applications describe broadly the generation of live attenuated vaccine viruses from recombinant cDNA clones for RSV, HMPV and PIV1, 2 and 3. For RSV and the PIVs, attenuation is achieved by missense mutations optimized for genetic stability, by gene deletion (*e.g.* E–089–1997; E–194–1999), by deletion of codons, by host range sequences (*e.g.* E–178–1999; E–201–2000; E–202–1999; E–187–1995), or by a combination of these (*e.g.* E–142–1996). HMPV has been attenuated by gene deletion (E–093–2003) and should be amenable to the other methods as well. Chimeras are described that contain the protective antigens of RSV subgroup B on an attenuated subgroup A background (*e.g.* E–178–1999), using a single attenuated backbone to make vaccines against both subgroups. Importantly, each of PIV viruses can be used as stable, efficient vectors for expressing the protective antigens of RSV, HMPV, or other viral pathogens in a schedule that permits boosting of immune responses (*e.g.* E–099–1999; E–089–1997; E–280–2001; E–092–2002). In this strategy, the PIV vector is a needed vaccine in addition to the expressed RSV/HMPV antigens, resulting in a bi- or multi-valent vaccine virus.

Augmentation of the immune response to the protective antigens can be achieved by positioning them in a more promoter proximal position (*e.g.* E–225–2000), by altering the regulation of viral transcription and replication by gene deletion, by deleting proteins that interfere with the host immune response, or by introducing an immunopotentiating molecule such as GM–CSF into the coding sequence of the vaccine virus (*e.g.* E–041–1999). Each of the viruses replicates efficiently in vitro, and stability of the attenuation phenotype can be achieved for each of the viruses described.

There are multiple approaches to the development of these live attenuated intranasal vaccines for RSV and PIV, making it possible for different parties to pursue unique approaches to vaccine development. The following patents and patent applications are available for licensing; certain virus vaccine strains are also available for licensing.

RSV Portfolio

1. E–123–1992/0,1,2

Attenuated Respiratory Syncytial Virus Vaccine Compositions

U.S. Patent 5,922,326 (issued July 13, 1999); U.S. Patent 6,284,254 (issued September 4, 2001); U.S. Patent 5,882,651 (issued March 16, 1999); PCT/US93/03670 (publication WO 93/21310) and all corresponding foreign rights.

2. E–187–1995/0,1,2

Production of Infectious Respiratory Syncytial Virus From Cloned Nucleotide Sequences

U.S. Patent 6,264,957 (issued July 24, 2001); PCT/US96/15524 (publication WO 97/12032) and all corresponding foreign rights.

3. E–142–1996/0–4

Production of Attenuated Respiratory Syncytial Virus Vaccines From Cloned Nucleotide Sequences

U.S. Patent 5,993,824 (issued November 30, 1999); U.S. Patent 6,689,367 (issued February 10, 2004); USSN 09/444,067 (filed November 19, 1999); USSN 09/444,221 (filed November 19, 1999); PCT/US97/12269 (publication WO 98/02530) and all corresponding foreign rights.

4. E–040–1999/0

Production of Attenuated Negative Stranded RNA Virus Vaccines From Cloned Nucleotide Sequences

USSN 09/958,292 (filed January 1, 2002); PCT/US00/09695 (publication WO 00/61737) and all corresponding foreign rights.

5. E–041–1999/0

Production of Recombinant Respiratory Syncytial Viruses Expressing Immune Modulatory Molecules

U.S. Patent 6,699,476 (issued March 2, 2004); USSN 10/031,095 (filed January 9, 2002); USSN 10/754,895 (filed January 8, 2004); PCT/US00/19042 (publication WO 01/04271) and all corresponding foreign rights.

6. E–194–1999/0

Production of Attenuated Respiratory Syncytial Virus Vaccines Involving Modification of M2 ORF2

U.S. Patent 6,713,066 (issued March 30, 2004).

7. E–178–1999/0,1,2

Production of Attenuated, Human-Bovine Chimeric Respiratory Syncytial Virus Vaccines (E–178–1999/0,1,2)

USSN 09/602,212 (filed June 23, 2000); USSN 10/030,951 (filed January 8, 2002); USSN 10/704,116 (filed November 7, 2003); PCT/US00/17755 (publication WO 01/04335) and all corresponding foreign rights.

8. E–225–2000/0

Respiratory Syncytial Virus Vaccines Expressing Protective Antigens From Promotor-Proximal Genes

USSN 09/887,469 (filed June 22, 2001); USSN 10/312,191 (filed December 20, 2002); PCT/US01/20107 (publication WO 02/00693) and all corresponding foreign rights.

PIV Portfolio

1. E–089–1997/2,3,4,5,6

Production of Parainfluenza Virus From Cloned Nucleotide Sequences

USSN 09/424,628 (filed April 5, 2000), USSN 09/083,793 (filed May 22, 1998), USSN 09/586,479 (filed June 1, 2000), USSN 09/459,062 (filed December 10, 1999); USSN 09/350,831 (filed November 9, 1999); U.S. Patent 6,410,023 (issued June 4, 2002); U.S. Patent 6,410,023 (issued June 25, 2002); PCT/US98/10551 (publication 98/53078), PCT/US00/18523 (publication WO 01/03744) and all corresponding foreign rights.

2. E–099–1999/0,1

Use of Recombinant Parainfluenza Viruses (PIVs) as Vectors To Protect Against Infection and Disease Caused by PIV and Other Human Pathogens

USSN 09/733,692 (filed December 8, 2000), PCT/US00/33293 (publication WO 01/42445) and all corresponding foreign rights.

3. E–202–1999/0

Attenuated Human-Bovine Chimeric Parainfluenza Virus (PIV) Vaccines

USSN 10/030,544 (filed January 8, 2002); PCT/US00/17066 (publication WO 01/04320) and all corresponding foreign rights.

4. E–201–2000/0

Attenuated Human-Bovine Chimeric Parainfluenza Virus (PIV) Vaccines

USSN 09/900,112 (filed July 5, 2001).

5. E–280–2001/0

Recovery of Recombinant Human Parainfluenza Virus Type 1 (HPIV1) from cDNA and Use of Recombinant HPIV1 as Vaccines and Vectors to Protect Against Infection and Disease Caused by PIV and Other Human Pathogens

USSN 10/302,547 (filed November 21, 2002); PCT/US02/37688 (publication WO 03/043587) and all corresponding foreign rights.

6. E–092–2002/0

Recovery of Recombinant Human Parainfluenza Virus Type 2 (HPIV) From cDNA and Use of Recombinant HPIV2 in Immunogenic Compositions and as Vectors To Elicit Immune Responses Against PIV and Other Human Pathogens

USSN 10/667,141 (filed September 18, 2003); PCT/US03/29685 (publication WO 2004/027037).

HMPV Portfolio

1. E–093–2003/0–2

Recovery of Recombinant Human Metapneumovirus (HMPV) From cDNA and Use of Recombinant HMPV in Immunogenic Compositions and as Vectors To Elicit Immune Responses Against HMPV and Other Human Pathogens

USSN 60/451,119 (filed February 28, 2003); USSN 60/478,667 (filed June 13, 2003); PCT/US04/05881 (filed February 27, 2004); and USSN 10/789,400 (filed February 27, 2004).

Dated: September 7, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–20656 Filed 9–13–04; 8:45 am]

BILLING CODE 4140–01–P

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 Initial Review Group Biobehavioral and Behavioral Sciences Subcommittee.

Date: November 15–16, 2004.

Time: 8 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: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@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: September 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20657 Filed 9–13–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Performance Partnership Grants (PPGs) Pilot Study for Performance Measures for Treatment of Co-occurring Disorders—New—SAMHSA's Center for Mental Health Services and Center for Substance Abuse Treatment will conduct a pilot study to examine the feasibility of collecting performance measures for treatment of co-occurring disorders. The pilot project will be conducted over a one-year period concluding at the close of 2005. Seven States with Co-occurring State Infrastructure Grants, and four additional non-grant States, together with multiple local sites within each of these States, will participate in the pilot project. Current data systems in each of the eleven States were reviewed in the first half of 2004, and actual data will be collected for the first two quarters of 2005. The balance of 2005 will be used for data analysis and report preparation, with recommendations for future steps.

Information will be collected about three performance areas: the number and percent of programs that offer screening, assessment, and treatment services for co-occurring disorders; the number of clients actually screened, assessed, and treated through these programs; and the effects of this care on client outcomes: reduction in symptoms and improved functioning, as well as better quality of life in the community.

If demonstrated to be feasible, these measures will subsequently be incorporated into the proposed set of performance measures for the mental health and substance abuse Performance Partnership Grants (PPGs). PPGs will be the next generation of block grants to be funded by SAMHSA, in which States will be granted additional program flexibility in return for reporting system performance measures.

Annual burden for the activities is shown below:

Activity	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Measure 1: State-level performance measures	730	2	0.45	650
Measure 2: Capacity to screen, assess, and treat	350	2	1.25	880
Measure 3: Outcomes	1,050	2	0.67	1,420
Total	2,130			2,950

Send comments to Summer King, SAMHSA Reports Clearance Officer, OAS, Room 7–1044, 1 Choke Cherry Road, Rockville, MD 20857. Written comments should be received by November 15, 2004.

Dated: September 8, 2004.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–20687 Filed 9–13–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by October 14, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT 090113

Applicant: Lincoln Park Zoological Gardens, Chicago, IL.

The applicant requests a permit to import biological samples from ill and dead chimpanzees *(Pan troglodytes)* from the Gombe Stream Reserve, Tanzania for the purpose of scientific research and veterinary diagnosis. This notice covers activities to be conducted by the applicant over a period of five years.

PRT–090216

Applicant: University of Tennessee, College of Veterinary Medicine, Knoxville, TN.

The applicant requests a permit to import biological samples from captive-held cheetah *(Acinonyx jubatus)* in various Australian zoo for the purpose of scientific research and veterinary diagnosis of feline coronavirus. This notice covers activities to be conducted by the applicant over a period of five years.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–092677

Applicant: Gregory Williamson, Fort Worth, TX.

The applicant requests a permit to import a polar bear *(Ursus maritimus)* sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Dated: September 3, 2004.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–20695 Filed 9–13–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and/or marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
Endangered Species			
088191	Michael H. Keith	69 FR 42764; July 16, 2004	August 18, 2004.
089001	Gerald H. Beier	69 FR 36095; June 28, 2004	August 18, 2004.
089007	Brandon E. Diego	69 FR 40965; July 7, 2004	August 18, 2004.
089451	Michael A. Cooper	69 FR 40965; July 7, 2004	August 18, 2004.
089454	Paul O. Lanier	69 FR 40965; July 7, 2004	August 18, 2004.
Marine Mammals			
089050	John J. Ottman, Jr.	69 FR 40965; July 7, 2004	August 31, 2004.

Dated: September 3, 2004.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–20696 Filed 9–13–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Re-opening of the Comment Period for the Draft Recovery Plan for the Pecos Sunflower

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of re-opening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a re-opening of the comment period for public review of the draft Recovery Plan for the Pecos sunflower (*Helianthus paradoxus*) for an additional 30 days. The original comment period was open from July 2, 2004, to August 2, 2004. We are re-opening the comment period in response to specific requests from the Texas Department of Transportation, the Bureau of Land Management, and Laguna Pueblo to allow additional time for public review of this draft Recovery Plan. This draft Recovery Plan includes recovery criteria and measures for the conservation of Pecos sunflower.

DATES: Comments on the draft Recovery Plan must be received on or before October 14, 2004.

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. Requests for copies of the draft Recovery Plan and written comments and materials regarding the draft Recovery Plan should be addressed to the Field Supervisor at the above address. An electronic copy of this draft Recovery Plan is also available at: *http://www.fws.gov.*

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.

On July 2, 2004, we published a Notice of Availability of the Draft Recovery Plan for the Pecos sunflower, opening a 30-day public comment period that ended on August 2, 2004. We received requests from the Texas Department of Transportation, the Bureau of Land Management, and the Laguna Pueblo to extend the comment period so that they might more thoroughly review the plan. Based on these requests, we have re-opened the comment period for 30 days for public review of this draft Recovery Plan.

The Pecos sunflower is a wetland annual plant that grows on wet, alkaline soils at spring seeps, wet meadows and pond margins in New Mexico and West Texas. 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: August 18, 2004.

Bryan Arroyo,

Acting Regional Director, Region 2,

[FR Doc. 04–20686 Filed 9–13–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Sentry Milk-vetch Recovery Plan for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability for public review of a draft recovery plan for the sentry milk-vetch (*Astragalus cremnophylax* var. *cremnophylax*). All known populations of the species occur on land managed by the National Park Service, Grand Canyon National Park (Park) in Coconino County, Arizona. We solicit review and comment from the public on this Draft Sentry Milk-vetch Recovery Plan (Draft Plan).

DATES: Comments on the Draft Plan must be received on or before October 14, 2004, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the Draft Plan may obtain a copy by accessing the Service's Arizona Ecological Services Field Office Internet Web page at *http://arizonaes.fws.gov* or by contacting the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona, 85021–4951 (602/242–0210) to obtain a copy via the mail or in person at the addresses above. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the address

provided above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mima Falk, Arizona Ecological Services Tucson Suboffice, 201 N Bonita Ave., Tucson, Arizona 85745 (520/670–6150 ext. 225).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant species 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 the recovery levels 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. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. We, along with other Federal agencies, will also take these comments into account in the course of implementing approved recovery plans.

The Draft Plan describes the status, current management, recovery objectives and criteria, and specific actions needed to reclassify the sentry milk-vetch from endangered to threatened and for eventual consideration for delisting. An original draft of the recovery plan was developed by Dr. Joyce Maschinski, a botanist and species specialist from The Arboretum at Flagstaff. The document was reviewed and updated by a team of botanists, soil scientists, naturalists and National Park Service land managers that have a history of researching or managing the plant and its environs. In 1993, a draft recovery plan for the sentry milk-vetch underwent technical and public review. The draft was not finalized at that time due to other high priority work. The reviews received on the 1993 draft are maintained in the Service's administrative record. Peer review of this Draft Plan is being conducted concurrent with public review.

Sentry milk-vetch is known from two, and up to three, locations on the South Rim and one location on the North Rim of the Park, where Kaibab limestone forms large flat platforms with shallow soils near pinyon-juniper woodlands. The primary cause of population decline prior to protection was trampling by Park visitors, although drought conditions may have worsened the situation. We carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by sentry milk-vetch as part of our 1990 final determination to list this species as endangered (55 FR 50184). The four major threats identified in the rule listing the species were: (1) Destruction of habitat and damage to individuals through human disturbance (trampling); (2) overutilization due to collection; (3) inadequacy of existing regulatory mechanisms to provide protection of habitat; and (4) naturally low reproduction of the species. The Draft Plan contains action items to alleviate these factors.

Public Comments Solicited

We solicit written comments on the Draft Plan. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 16, 2004.

Bryan Arroyo,

Acting Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. 04–20685 Filed 9–13–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; HAG–04–0071; WAOR–57423]

Public Land Order No. 7614; Withdrawal of National Forest System Lands for the Halliday Fen Research Natural Area; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 646.40 acres of National Forest System lands from location and entry under the United States mining laws for a period of 20 years to protect a portion of the Halliday Fen Research Natural Area.

DATES: Effective September 10, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Ahlenslager, Botanist, Colville National Forest, 509–684–7178, or Charles R. Roy, BLM Oregon/Washington State Office, 503–808–6189.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws 30 U.S.C. Ch. 2 (2000), to protect the unique characteristics, sensitive fauna, hydrology, and the research values within the Halliday Fen Research Natural Area:

Colville National Forest

Willamette Meridian

T. 40 N., R. 44 E.,
Sec. 31, W½NE¼, SE¼NE¼, SE¼NW¼, E½SW¼, and NW¼SE¼.

Portions of the following lands as specifically identified and described by metes and bounds in the "Boundary Description for Halliday Fen Research Natural Area to be Withdrawn from Mineral Location" dated April 19, 2002, in the official records of the Bureau of Land Management, Oregon/Washington State Office and the Colville National Forest Office, Colville, Washington:

T. 39 N., R. 43 E.,
Sec. 1, lot 1.
T. 40 N., R. 43 E.,
Sec. 36, SE¼SE¼.
T. 39 N., R. 44 E.,
Sc. 6, lots 2 through 5, inclusive.
T. 40 N., R. 44 E.,
Sec. 30, NW¼SE¼, SE¼SW¼, and S½SE¼;
Sec. 31, lots 2, 3, 4, NE¼NE¼, NE¼NW¼, NE¼SE¼, and S½SE¼;
Sec. 32, W½W½.

The areas described aggregate 646.40 acres in Pend Oreille County.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: September 8, 2004.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–20760 Filed 9–10–04; 12:24 pm]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts; Extension

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expired concession contracts for a period of up to one year, or until such time as new contracts are executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations expired by their terms on December 31, 2003. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Concid ID No.	Concessioner name	Park
GATE012–94	HS Concessions	Gateway National Recreation Area.
COLO005–95	Eastern National	Various Parks, Northeast Region.
NERO001–97	Eastern National	Various Parks, Northeast Region.

DATES: Effective January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: July 20, 2004.

Jim Poole,

Acting Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 04–20640 Filed 9–13–04; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Decision Notice and Finding of No Significant Impact (FONSI) for the Proposal To Rehabilitate the Yellow Barn and Chautauqua Tower at Glen Echo Park in Glen Echo, MD

AGENCY: National Park Service, Interior.

ACTION: Availability of the decision notice and FONSI for the proposal to rehabilitate the Yellow Barn and Chautauqua Tower at Glen Echo Park in Glen Echo, Maryland.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service (NPS) announces the availability of the Decision Notice and FONSI for the Rehabilitation of the Yellow Barn and Chautauqua Tower at Glen Echo Park, a unit of the George Washington Memorial Parkway (GWMP). The Decision Notice and FONSI identifies Alternative C as selected by the NPS for action. It is the preferred and environmentally preferred alternative in the Environmental Assessment. Under this alternative, most of the existing Yellow Barn structure located in Glen Echo Park, Glen Echo, Maryland would be demolished, (an exterior stone wall from the Chautauqua era would be retained), and a new structure built in the same location. The Chautauqua Tower, including stairs, will be stabilized and rehabilitated. This project will provide and maximize useful, efficient program space; address and correct Life and Safety Code deficiencies, as well as address and correct accessibility deficiencies.

DATES: The Environmental Assessment, upon which the decision and FONSI were made, was available for public comment from December 2003—January 2004. There were no public comments received.

ADDRESSES: The Decision Notice and FONSI will be available for public inspection Monday through Friday, 8 a.m. through 4 p.m. at the GWMP Headquarters, Turkey Run Park, McLean, Virginia. The FONSI can also be viewed on the GWMP Web site at *http://www.nps.gov/gwmp.*

SUPPLEMENTARY INFORMATION: The Decision Notice and FONSI completes the Environmental Assessment process.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Koenen (703) 289–2540.

Dated: September 3, 2004.

Jon James,

Deputy Superintendent, George Washington Memorial Parkway.

[FR Doc. 04–20644 Filed 9–13–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore Advisory Commission, Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on September 27, 2004.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda.
2. Approval of Minutes of Previous Meeting (June 21, 2004).
3. Reports of Officers.
4. Reports of Subcommittees.
5. Superintendent's Report. Update on East Harbor/Pilgrim Lake. Report on Control of Phragmites and Preservation of Cranberry Bogs within Seashore News from Washington.
6. Old Business.
7. New Business.
8. Date and agenda for next meeting.
9. Public comment and
10. Adjournment.

The meeting is open to the public. It is expected that 15 persons will be able

to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: June 29, 2004.

Michael B. Murray,

Deputy Superintendent.

[FR Doc. 04–20643 Filed 9–13–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Krusenstern Nation Monument Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Subsistence Resource Commission for Cape Krusenstern National Monument will be held at Kotzebue, Alaska. The purpose of the meeting will be to review Federal Subsistence Board wildlife proposals and continue work on National Park Service subsistence hunting program recommendations including other related subsistence management issues. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operates in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The meeting will be held on Tuesday, October 12, 2004, from 9 a.m. to 5 p.m. at the U.S. Fish and Wildlife Service conference room in Kotzebue, Alaska.

FOR FURTHER INFORMATION CONTACT: Superintendent, Julie Hopkins and Willie Goodwin at (907) 442–3890, Ken Adkisson at (800) 471–2352, or (907) 443–2522.

SUPPLEMENTARY INFORMATION: Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. Locations and dates may need to be changed based on weather or local circumstances.

The following agenda items will be discussed:

1. Welcome—Introduction of commission members and guests.
2. Review and approve agenda.
3. Review and approve minutes from last meeting.
4. Review Commission Purpose and Status of Membership.
5. Superintendent's Report.
   a. Resource Projects, Research and Science
   b. Muskoxen Management Plan
   c. Commercial Services Plan
   d. Resource Protection and Education
   e. Northwest Arctic Heritage Center
6. Update—Review Federal Subsistence Board Wildlife Proposals and Actions.
7. Update—Review Federal Subsistence Board Fisheries Proposals and Actions.
8. Review Status of Hunting Plan Recommendations
9. New Business.
10. Public and agency comments.
11. SRC work session on issues (if needed).
12. Set time and place of next SRC meeting. Identify agenda topics for next meeting.
13. Adjournment.

Draft minutes will be available for public inspection approximately six weeks after the meeting from: Superintendent Western Arctic National Parklands, Alaska Region, P.O. Box 1029, Kotzebue, AK 99752.

Dated: August 20, 2004.

Victor Knox,

Deputy Regional Director, Alaska Region.

[FR Doc. 04–20641 Filed 9–13–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, Chesapeake and Ohio Canal National Historical Park Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission (the Commission) will be held on Tuesday, September 14, 2004, at 10 a.m. at the Glen Echo Town Hall, 6106 Harvard Avenue, Glen Echo, MD.

The purpose of the meeting will be to review and discuss recently provided information from Georgetown University on their proposed boathouse.

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Superintendent Kevin Brandt at (301) 714–2201.

DATES: September 14, 2004, at 10 a.m.

ADDRESSES: Glen Echo Town Hall, 6106 Harvard Avenue, Glen Echo, Maryland 20812.

FOR FURTHER INFORMATION CONTACT: Superintendent Keven Brandt, (301) 714–2201.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historic Park.

Normally, notice of advisory committee meetings are published at least 15 calendars prior to the meeting date. However, due to: (1) The compelling need for the Commission to discuss new information concerning Georgetown University's proposal for a boathouse on the Potomac River; (2) the difficulty of finding a date suitable to all Commission members; and (3) the difficulty of finding a suitable meeting location, it was not possible to give 15 calendar days advance notice.

Members of the Commission are:

Mrs. Sheila Rabb Weidenfield, Chairman
Mr. Charles J. Weir
Mr. Barry A. Passett
Mr. Terry W. Hepburn
Ms. Elise B. Heinz
Ms. JoAnn M. Spevacek
Mrs. Mary E. Woodward
Mrs. Donna Printz
Mrs. Ferial S. Bishop
Ms. Nancy C. Long
Mrs. Jo Reynolds
Dr. James H. Gilford
Brother James Kirkpatrick

Dated: September 3, 2004.

Bernard C. Fagan,

Deputy Chief, National Park Service Office of Policy.

[FR Doc. 04–20639 Filed 9–13–04; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Kobuk Valley National Park Commission Meeting

AGENCY: National Park Service, Interior.
ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Subsistence Resource Commission for Kobuk Valley National Park will be held at Kotzebue, Alaska. The purpose of the meeting will be to review Federal Subsistence Board wildlife proposals and continue work on National Park Service subsistence hunting program recommendations including other related subsistence management issues. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operates in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The meeting will be held on Wednesday, October 13, 2004, from 9 a.m. to 5 p.m. at the U.S. Fish and Wildlife Service conference room in Kotzebue, Alaska.

FOR FURTHER INFORMATION CONTACT: Superintendent, Julie Hopkins and Willie Goodwin at (907) 442–3890, Ken Adkisson at (800) 471–2352, or (907) 443–2522.

SUPPLEMENTARY INFORMATION: Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. Locations and dates may need to be changed based on weather or local circumstances.

The following agenda items will be discussed:

1. Welcome—Introduction of commission members and guests.
2. Review and approve agenda.
3. Review and approve minutes from last meeting.
4. Review Commission Purpose and Status of Membership.
5. Superintendent's Report.
   a. Resource Projects, Research and Science.
   b. Muskoxen Management Plan.
   c. Commercial Services Plan.
   d. Resource Protection and Education.
   e. Northwest Arctic Heritage Center.
6. Update—Review Federal Subsistence Board Wildlife Proposals and Actions.
7. Update—Review Federal Subsistence Board Fisheries Proposals and Actions.
8. Review Status of Hunting Plan Recommendations.
9. New Business.
10. Public and agency comments.
11. SRC work session on issues (if needed).
12. Set time and place of next SRC meeting. Identify agenda topics for next meeting.
13. Adjournment.

Draft minutes will be available for public inspection approximately six weeks after the meeting from: Superintendent Western Arctic National Parklands, Alaska Region, P.O. Box 1029, Kotzebue, AK 99752.

Dated: August 20, 2004.

Victor Knox,

Deputy Regional Director, Alaska Region.

[FR Doc. 04–20642 Filed 9–13–04; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the American Museum of Natural History, New York, NY, that meet the definition of unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The two cultural items are a partial stone pipe and the handle of a stone club. The partial pipe, which appears to be about half of the original object, is a sculpted tubular pipe made of steatite. The bowl of the pipe is carved with an anthropomorphic design. The club handle is made of stone and is carved with a zoomorphic design.

In August 1902, W.F. Sonderman of Kennewick, WA, found the partial pipe in an ''Indian grave'' during the construction of an irrigation canal. The grave was located about 1/4 mile from the bank of the Yakima River at a point about 9 miles above its mouth. The museum acquired the pipe from Harlan I. Smith, who had purchased it from Mr. Sonderman. The museum accessioned the item in 1903.

At an unknown date, D.W. Owens collected the stone club handle on Blalock Island, Benton County, WA, which he gifted to the museum in 1905.

The locale of the two unassociated funerary objects is consistent with the postcontact territory of the Confederated Tribes of the Umatilla Reservation, Oregon. Mr. Sonderman indicated that the pipe was associated with glass beads, a metallic handle, and buttons, suggesting a postcontact date for the burial. The glass beads, metallic handle, and buttons were not part of the purchase made by Mr. Smith. According to experts of Plateau archeology, carved stone clubs have been found exclusively in burials on the Plateau. The Confederated Tribes of the Umatilla Reservation, Oregon has indicated that Blalock Island contains Umatilla habitation sites and that this type of stone club is commonly found in burials and cremations along the Columbia River. It is documented that burials on Blalock Island date to the postcontact period, which suggests that the club handle is from the postcontact period or from a postcontact burial.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Umatilla Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, before October 14, 2004. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Umatilla Reservation, Oregon may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Confederated Tribes of the Umatilla Reservation, Oregon that this notice has been published.

Dated: July 8, 2004.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–20650 Filed 9–13–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY. The human remains were removed from San Miguel County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of the Hopi Tribe of Arizona; Pueblo of Cochiti, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; and Pueblo of Santo Domingo, New Mexico.

Between 1914 and 1916, human remains representing nine individuals were removed from the Pecos Pueblo, Pecos Valley, San Miguel County, NM, by Mr. A.V. Kidder while he was working for Phillips Academy, Andover, MA. The human remains were donated to the Peabody Museum of Archaeology and Ethnology, Harvard University, in 1919. The American Museum of Natural History acquired the human remains in 1932 through an exchange with the Peabody Museum of Archaeology and Ethnology. No known individuals were identified. Four associated funerary objects, which are not in the possession of the American Museum of Natural History, are documented as one obsidian projectile point, one scraper, one bone awl, and one worked sherd.

The human remains have been identified as Native American based on burial practice, nature of funerary objects, and provenience. The human remains date to both the pre- and postcontact periods. In 1838, Pecos Pueblo was abandoned, and the 17 to 20 survivors migrated to Jemez Pueblo. Mr. Kidder noted in 1958 that people at Santo Domingo, Cochiti, and San Felipe claim Pecos ancestry and that these groups may represent migrations prior to the final abandonment of Pecos. Consultants from the three pueblos have not confirmed Mr. Kidder's statement, but some have referred to "historical connections" in some cases. Pueblo of Jemez, New Mexico representatives have indicated that many individuals there claim ancestry to Pecos. Some people at Pueblo of Jemez, New Mexico still speak the Pecos language. A Pecos governor has been selected there, and he holds the Pecos cane of office. Descendants of Pecos Pueblo still hold ceremonies that were brought to Jemez by the original Pecos survivors.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of nine individuals of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Pueblo of Jemez, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5837, before October 14, 2004. Repatriation of the human remains to the Pueblo of Jemez, New Mexico may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Hopi Tribe of Arizona; Pueblo of Cochiti, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; and Pueblo of Santo Domingo, New Mexico that this notice has been published.

Dated: August 3, 2004.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–20655 Filed 9–13–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the California Department of Parks and Recreation, Sacramento, CA. The human remains and associated funerary objects were removed from Sacramento and San Joaquin Counties, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by California Department of Parks and Recreation professional staff in consultation with representatives of the Buena Vista Rancheria of Me-wuk Indians of California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians of California; Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; and United Auburn Indian Community of the Auburn Rancheria of California.

Also consulted were the Central Sierra Me-wuk Cultural and Historic Preservation Committee (a committee

that represents the Miwok), American Indian Council of Mariposa, Calaveras Band of MiWuk (a nonfederally recognized Indian group), and the Sierra Nevada Native American Council.

In the 1930s, human remains representing a minimum of two individuals were removed from site CA-SAC–107, which is located 3 miles southeast of Elk Grove and south of the Cosumnes River in south-central Sacramento County, CA. The site was excavated by students from Sacramento Junior College. The human remains and associated funerary objects were held by three private collectors: Anthony H. Ishisaka, N. Blackman, and Ric Windmiller. Mr. Ishisaka donated his collection to the California State Indian Museum, in Sacramento, CA, on September 1, 1958. Mr. Blackman donated his collection to the Nevada State Museum in 1937, which later donated the collection to the California State Indian Museum on June 17, 1976. Mr. Windmiller donated his part of the collection to the California State Indian Museum on March 24, 1959. The California State Indian Museum has been managed by the California Department of Parks and Recreation since 1947. No known individuals were identified. The 55 associated funerary objects are 6 Haliotis beads attached to one of the crania, 2 Haliotis ornaments, 33 Haliotis beads, and 14 Olivella beads.

Components of site CA-SAC–107 show dates that range from the Early Horizon period (beginning around 2000 B.C.) into the historic period. The technology and style of the associated funerary objects is consistent with the Early Horizon period, also known as the Windmiller pattern. Other burials at the site, probably later than the two described above, are dated by radiocarbon to 3,075 years B.P. (±105 years) and 2,675 years B.P. (±125 years). California Department of Parks and Recreation archeologist Dr. Peter D. Shultz stated that the human remains from the site were Northern Valley Yokuts based on funerary practices and proximity to known Yokuts areas or Plains Miwok based on Miwok occupation of the Central Valley and oral historical accounts of Miwok families occupying the area.

On June 3, 1974, human remains representing a minimum of one individual were removed from the Blossom Mound site (CA-SJO–68), located 2 miles northwest of Thornton, CA, and in the delta south of the Mokelumne River in northwestern San Joaquin County, CA. The human remains were collected by California Department of Parks and Recreation archeologist Dr. Peter D. Shultz. No known individuals were identified. No associated funerary objects are present.

There was no direct dating of these burials, but the site is attributed the Early Horizon period, also known as the Windmiller pattern, which begins around 4,000 years ago. The collection has been identified with the Yachicumne tribe of the Northern Valley Yokuts, or Plains Miwok. California Department of Parks and Recreation archeologist Dr. Peter D. Shultz stated that the human remains from the site were Northern Valley Yokuts based on funerary practices and proximity to known Yokuts areas or Plains Miwok based on Miwok occupation of the Central Valley and oral historical accounts of Miwok families occupying the area.

On June 5, 1958 human remains representing a minimum of one individual were removed from the McGillivray Mound site (CA-SJO–142), located in the Sacramento Delta, south of the Mokelumne River, in the northwest corner of San Joaquin County, CA. The human remains were collected by Norman L. Wilson and William H. Olsen prior to construction of a Pacific Gas and Electric Company pipeline. No known individuals were identified. The three associated funerary objects are two Haliotis ornaments with Olivella beads and asphaltum attached to them and one cobble.

There was no direct dating of these burials, but the site is attributed to the Early Horizon period, which began around 2000 B.C., and the Middle Horizon period, which ended around A.D. 400. The style and technology of the associated funerary objects is consistent with the Windmiller pattern. The collection has been identified with the Yachicumne or Jalalon tribe of Northern Valley Yokuts, or with Plains Miwok. California Department of Parks and Recreation archeologist Dr. Peter D. Shultz stated that the human remains from the site were Northern Valley Yokuts based on proximity to known Yokuts areas, or Plains Miwok based on Miwok occupation of the Central Valley of California and oral historical accounts of Miwok families occupying the area.

In September of 1965, human remains representing a minimum of 11 individuals were removed from site CA-SJO–150, located 10 miles northeast of Stockton, CA, and south of the Calaveras River in central San Joaquin County, CA. The human remains were removed by Mrs. Marie Descher of Stockton and were placed in the California Department of Parks and Recreation collection. The burials were recorded by F.A. Riddell on July 23, 1966. No known individuals were identified. The 37 associated funerary objects are 3 food remains, 4 flakes, 18 pieces of baked clay, 1 scraper, 6 Haliotis beads, and 5 Olivella beads.

Based on the technology and style of the associated funerary objects, the site has been dated to the Middle Horizon period (circa 2000 B.C.- A.D. 400). Geographical location indicates that the human remains are likely associated with the Northern Valley Yokuts or with Plains Miwok.

At an unknown date prior to December 1963, human remains representing a minimum of one individual were removed from an undetermined site south of the Mokelumne River in the vicinity of Lockeford, in northeastern San Joaquin County, CA. The human remains were donated by Donald D. Tribble of Sacramento, CA, to the California State Indian Museum on December 2, 1963, and a gift deed was approved on January 22, 1964. The human remains were stored in California Department of Parks and Recreation's Sutter's Fort Annex and were subsequently moved to the State Museum Resource Center in West Sacramento, CA. No known individual was identified. No associated funerary objects are present.

The age of the human remains is unknown. Geographical location indicates that the human remains are likely associated with the Northern Valley Yokuts or with Plains Miwok.

In 1973, human remains representing a minimum of three individuals were removed from the Safflower site (CA-SJO–145), also known as New Hope 2, C–145, located in the delta south of the big bend of the Mokulumne River in northwestern San Joaquin County, CA. Archeological salvage excavations for the planned Delta Peripheral Canal were conducted from April to June 1973 by the California Department of Parks and Recreation and supervised by Dr. Peter D. Shultz. No known individuals were identified. The 18 associated funerary objects are 2 flakes, 1 projectile point, 1 piece of baked clay, 1 mammal bone, and 13 pieces of shell.

The three burials were dated by radiocarbon analysis, the first burial to 1,870 years B.P. (±250 years), the second burial to 900 years B.P. (±250 years), and the third burial to 2,500 years B.P. (±200 years). The associated funerary objects are consistent with the Middle Horizon period (circa 2000 B.C.-A.D. 400). The site is believed to be Northern Valley Yokuts or Central Sierra Miwok based on early movement of both groups near the borders of what is now

identified as their historic geographical territories.

All of the sites described above lie within Yokuts or Miwok territory. Archeologists believe that the Penutian-speaking Yokuts and Miwok are descended from the Windmiller people who occupied the Central Valley of California 4,000 to 3,000 years ago. The history of the California rancherias in the Central Valley and Sierra Nevada foothill regions of California shows that the descendants of the historic Northern Valley Yokuts and Plains Miwok were ultimately dispersed to the federally recognized Yokuts and Miwok rancherias. The present-day tribes that have a shared group identity with the Yokuts and Miwok are the Buena Vista Rancheria of Me-wuk Indians of California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians of California; Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Table Mountain Rancheria of California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; and United Auburn Indian Community of the Auburn Rancheria of California.

Officials of the California Department of Parks and Recreation have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 19 individuals of Native American ancestry. Officials of the California Department of Parks and Recreation also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 113 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the California Department of Parks and Recreation have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Buena Vista Rancheria of Me-wuk Indians of California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians of California; Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Table Mountain Rancheria of California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; and United Auburn Indian Community of the Auburn Rancheria of California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Paulette Hennum, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 Ninth Street, Sacramento, CA 95814, telephone (916) 653–7976, before October 14, 2004. Repatriation of the human remains and associated funerary objects to the Buena Vista Rancheria of Me-wuk Indians of California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians of California; Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Table Mountain Rancheria of California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; and United Auburn Indian Community of the Auburn Rancheria of California may proceed after that date if no additional claimants come forward.

California Department of Parks and Recreation is responsible for notifying the Buena Vista Rancheria of Me-wuk Indians of California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians of California; Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Table Mountain Rancheria of California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; and United Auburn Indian Community of the Auburn Rancheria of California that this notice has been published.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–20646 Filed 9–13–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the California Department of Parks and Recreation, Sacramento, CA. The human remains were removed from Madera, Merced, Stanislaus, and San Joaquin Counties, CA, and from unknown locations in California.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by California Department of Parks and Recreation professional staff in consultation with representatives of the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; and Tule River Indian Tribe of the Tule River Reservation, California.

Madera County, CA.

On an unknown date before August 1961, human remains consisting of one tooth and representing a minimum of one individual were removed from site CA-MAD–102 on the northern shoreline of Millerton Lake in Millerton Lake State Recreation Area in Madera County, CA, during a cultural resources survey. No known individual was identified. No associated funerary objects are present.

Site CA-MAD–102 is a habitation site covering approximately one-half acre. Three triangular projectile points found at the site suggest that it was occupied after A.D. 500, while a glass bead and ceramic and glass fragments suggest that the site continued to be occupied into the Historic period, which in California began around A.D. 1650. Site CA-MAD–102 lies within the historically documented geographic area inhabited by the Northern Valley Yokuts.

Merced County, CA.

In 1961, human remains representing a minimum of four individuals were removed from site GWH 68, J 26 in Merced, Merced County, CA, during a salvage survey undertaken by F.A. Riddell for the California Department of Parks and Recreation. Site GWH 68, J 26 was partially destroyed in March 1961 by gravel mining on private land when several burials were bulldozed. No known individuals were identified. The 14 associated funerary objects are 2 slabs, 3 mortars, 1 shell, 4 flakes, 1 charcoal sample, 1 mano, 1 pestle, and 1 metal cable.

Stylistic and technological attributes of the cultural items provide a date for the burials between the late Prehistoric and early Historic periods. Site GWH 68, J 26 lies within the historically documented geographic area inhabited by the Yokuts, Kawatchwah, and Nopchinchi tribes of the Northern Valley Yokuts.

Stanislaus County, CA.

In 1986, human remains representing a minimum of seven individuals were removed from three sites on the south fork of Orestimba Creek in the eastern portion of Henry J. Coe State Park in Stanislaus County, CA. Five individuals were removed from site CA-STA–207, one individual was removed from site CA-STA–234, and one individual was removed from site CA-STA–204. The human remains were collected by California Department of Parks and Recreation archaeologists Joe D. Hood and John L. Kelly during an archeological assessment of the proposed Orestimba day-use facility. No known individuals were identified. No associated funerary objects are present.

The age of the burials is unknown. The sites lie within the historically documented geographic areas inhabited by the Yalesumne, Lakisamne, Kawatchwah, and Coconoon tribes of the Northern Valley Yokuts.

San Joaquin County, CA.

In 1962, human remains representing a minimum of two individuals were removed from site CA-SJO–152 in Caswell Memorial State Park in south-central San Joaquin County, CA, by Walter Brown, who donated the human remains to the California Department of Parks and Recreation. The human remains were sent to the California State Indian Museum in Sacramento, CA, in 1987. The museum has been managed by the California Department of Parks and Recreation since 1947. No known individuals were identified. No associated funerary objects are present.

Based on the presence of Olivella beads in lower levels at the site, the burials have been dated to the Middle Horizon (2000 B.C.- A.D. 400). Site CA-SJO–152 lies within the historically documented geographic area inhabited by the Yalesumne, Lakisamne, and Apelumne tribes of the Northern Valley Yokuts.

On an unknown date, human remains representing a minimum of one individual were removed from site CA-SJO–105, 3 miles north of the Calaveras River and north of Stockton, in central San Joaquin County, CA. The human remains were collected by Vincent Marino of Stockton, CA, who donated the human remains to the California State Indian Museum in Sacramento, CA, in August 1963. No known individuals were identified. No associated funerary objects are present.

The age of the burial is unknown. Site CA-SJO–105 lies within the historically documented geographic area inhabited by the Yachicumne and Chulamni tribes of the Northern Valley Yokuts.

In 1970 and 1971, human remains representing a minimum of two individuals were removed from site CA-SJO–91, French Camp Slough (also known as Schenck-Dawson 91, Barr Island, and Jones Mound 4) in San Joaquin County, CA. The human remains were excavated by Sacramento City College under the supervision of Jerald J. Johnson and came into possession of the California Department of Parks and Recreation in 1985. No known individuals were identified. No associated funerary objects are present.

The age of the burials is attributed to the Middle Horizon (2000 B.C.- A.D. 400). Site CA-SJO–91 lies within the historically documented geographic area inhabited by the Yachicumne, Chulamni, and Jalalon tribes of the Northern Valley Yokuts.

At an unknown date prior to 1960, a minimum of one individual was removed from site CA-SJO–89, the Garwood Ferry Mound site, in southwestern San Joaquin County, CA. The acquisition history is unknown, although the human remains were part of the California State Indian Museum's collection in Sacramento, CA, prior to acquisition by the California Department of Parks and Recreation. No known individuals were identified. No associated funerary objects are present.

The age of the burial is unknown. Site CA-SJO–89 lies within the historically documented geographic area inhabited by the Yachicumne, Chulamni, and Chucumne tribes of the Northern Valley Yokuts.

In 1951 and 1952, human remains representing a minimum of two individuals were removed after a flood from site CA-SJO–10, a mound located along the Stanislaus River in San Joaquin County, CA. One of the burials was donated to Columbia State Historic Park, Columbia, CA, in 1953 by Dan L. Bava of Escalon, CA, and the other burial was donated to Columbia State Historic Park in 1955 by Loren E. Hill. No known individuals were identified. No associated funerary objects are present.

The age of the burials is unknown. Site CA-SJO–10 lies within the historically documented geographic area inhabited by the Yalesumne, Lakisamne, and Apelumne tribes of the Northern Valley Yokuts.

All of the sites described above lie within Yokuts territory. Archeologists believe that the Penutian-speaking Yokuts are descended from the Windmiller people, who occupied the Central Valley of California from 4,000 to 3,000 years ago. The Yokuts territory was the largest of the prehistoric tribes' territory in California, and included almost the entire Central Valley, bounded in the north by where the San Joaquin River empties into the Sacramento River, and in the south by the foothills of the Tehachepi Mountains. The Yokuts comprised over 200 villages or communities, each with its own subsistence strategy and belonging to distinct dialect groups, and are today represented by three groups or living areas: the Northern Valley Yokuts, Southern Valley Yokuts, and Foothill Yokuts. Archeological, ethnographic, historical and oral historical evidence link the Northern Valley Yokuts to the present-day Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; and Tule River Indian Tribe of the Tule River Reservation, California.

Unknown Counties, CA.

At an unknown date between 1927 and 1932, human remains representing a minimum of one individual were removed from an unknown location in California by Frank Latta who donated the human remains to the California Department of Parks and Recreation on July 24, 1998. No known individual was identified. No associated funerary objects are present.

The age of the human remains is unknown. The California Department of Parks and Recreation Committee on Repatriation determined that, while the collection lacks provenience, it is likely that the human remains are Yokuts since most of Mr. Latta's research and collection activity was in the historical geographical territory of the Yokuts. The present-day tribes that have a shared

group identity with the Yokuts are the Picayune Rancheria of the Chukchansi Indians of California, Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; and the Tule River Indian Tribe of the Tule River Reservation, California.

On an unknown date between 1927 and 1932, human remains representing a minimum of 13 individuals were removed from an unknown location in California by Frank Latta who donated the human remains to the California Department of Parks and Recreation on July 24, 1988. No known individuals were identified. The 64 associated funerary objects are 1 glass bead, 2 steatite beads, 3 Haliotis beads, 10 Olivella beads, 4 shell beads, 1 dentalium bead, 1 shell bead with asphaltum, 1 Haliotis ornament, 1 lithic blade, 5 flakes, 2 bifaces, 2 scrapers, 6 projectile points, 1 brass strap, 1 chalk sample, 1 antler tine, 13 food remains, 3 botanical samples, 4 soil samples, and 2 unknown items.

The age of the human remains and associated funerary objects is unknown. The associated funerary objects are consistent with the types used by the Northern and Southern Valley Yokuts. The California Department of Parks and Recreation Committee on Repatriation determined that, while the collection lacks provenience, it is likely that the human remains are Yokuts since most of Mr. Latta's research and collection activity was in the historical geographical territory of the Yokuts. The present-day tribes that have a shared group identity to the Yokuts are the Picayune Rancheria of the Chukchansi Indians of California, Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; and the Tule River Indian Tribe of the Tule River Reservation, California.

Officials of the California Department of Parks and Recreation have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains listed above represent the physical remains of 34 individuals of Native American ancestry. Officials of the California Department of Parks and Recreation also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 78 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the California Department of Parks and Recreation have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; and Tule River Indian Tribe of the Tule River Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Paulette Hennum, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 Ninth Street, Sacramento, CA, telephone (916) 653–7976, before October 14, 2004. Repatriation of the human remains and associated funerary objects to the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; and Tule River Indian Tribe of the Tule River Reservation, California may proceed after that date if no additional claimants come forward.

The California Department of Parks and Recreation is responsible for notifying the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; and Tule River Indian Tribe of the Tule River Reservation, California that this notice has been published.

Dated: July 23, 2004.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–20648 Filed 9–13–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Field Museum of Natural History, Chicago, IL. The human remains were removed from Boundary County, ID.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Field Museum of Natural History professional staff in consultation with representatives of the Kootenai Tribe of Idaho and the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana.

In 1897, human remains representing a minimum of two individuals were obtained in Bonner's Ferry, Boundary County, ID, by George A. Dorsey for the Field Museum of Natural History. The 1896–1897 Annual Report of the Director to the Board of Trustees describes a four-month trip that assistant curator of anthropology George A. Dorsey and museum photographer Edward Allen made "among the Indians of the far West," that included a visit to the "Kootenay" tribe. The report states that "two complete skeletons, a male and a female, were also secured from the Kootenay near Bonner's Ferry." No known individuals were identified. No associated funerary objects are present.

The human remains have been identified as Native American, based on the specific cultural and geographic attribution in Field Museum of Natural History records. The records identify the human remains as "Kootenay" from Bonner's Ferry, ID. "Kootenay" descendents in Idaho are represented by the present-day Kootenai Tribe of Idaho.

Officials of the Field Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Field Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Kootenai Tribe of Idaho.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Helen Robbins, Repatriation Specialist, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605–2496, telephone (312) 665–7317, before October 14, 2004. Repatriation of the human remains to the Kootenai Tribe of Idaho may proceed after that date if no additional claimants come forward.

The Field Museum of Natural History is responsible for notifying the Kootenai

Tribe of Idaho and the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana that this notice has been published.

Dated: August 3, 2004.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–20653 Filed 9–13–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Angeles National Forest, Arcadia, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the U.S. Department of Agriculture, Forest Service, Angeles National Forest, Arcadia, CA. The human remains were removed from Los Angeles County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Angeles National Forest professional staff in consultation with representatives of the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation, California; Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California; Native American Heritage Commission; and over 70 individuals representing nonfederally recognized Indian groups.

In November 1974, human remains representing a minimum of two individuals were removed from archeological site 05–01–54–13 (CA-LAn–1301) on Mount Emma in Angeles National Forest, Los Angeles County, CA, during salvage excavations conducted by archeologists from California State University, Dominguez Hills and the Antelope Valley Archaeological Society. The excavations were undertaken in response to Forest Service concerns over the potential for disturbance of human remains that had been exposed on the top of a road cut. Following the excavations, the remains of one individual were curated at California State University, Dominguez Hills until 1994 when they were transferred to Angeles National Forest. The remains of the other individual were curated at Pomona College, Claremont, CA, until 1998 when they were transferred to Angeles National Forest. No known individuals were identified. No associated funerary objects are present.

The tightly flexed form of inhumation in both burials suggests that site 05–01–54–13 is a late Prehistoric period site typical of settlement in the desert foothills of the San Gabriel Mountains. During the late Prehistoric period, inhumation appears to have been practiced in the Tataviam cultural area to the west of Angeles National Forest and in the Desert/Kitanemuk Serrano cultural area to the north and northwest of the forest. Based on burial customs, archeological context, geography, and information obtained during consultation, the individuals are of Native American ancestry. The present-day San Manuel Band of Serrano Mission Indians of the San Manuel Reservation, California traces a shared group identity with the Desert/Kitanemuk Serrano cultural groups that inhabited the area around the site during the late Prehistoric period.

Officials of Angeles National Forest have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of Angeles National Forest also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the San Manuel Band of Serrano Mission Indians of the San Manual Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Jody N. Noiron, Forest Supervisor, Angeles National Forest, 701 North Santa Anita Avenue, Arcadia, CA 91006, telephone (626) 574–1613, before October 14, 2004. Repatriation of the human remains to the San Manuel Band of Serrano Mission Indians of the San Manual Reservation, California may proceed after that date if no additional claimants come forward.

Angeles National Forest is responsible for notifying the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation, California; Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California; Native American Heritage Commission; and over 70 individuals representing nonfederally recognized Indian groups that this notice has been published.

Dated: July 6, 2004.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–20651 Filed 9–13–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: U.S. Department of Agriculture, Forest Service, Ottawa National Forest, Ironwood, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the U.S. Department of Agriculture, Forest Service, Ottawa National Forest that meets the definition of "object of cultural patrimony" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

The one cultural item is a white pine dugout canoe.

The canoe was discovered in 1953 by a private landowner at the bottom of Thousand Island Lake, Watersmeet, MI. The Ottawa National Forest acquired the canoe in the late 1960s from Jay Shifra, a resident of Watersmeet, and curated the canoe at the Ottawa National Forest Visitors Center since the early 1970s. The canoe measures 32 1/2 feet in length and 31 inches wide at the center with a height of 21 inches and has a carrying capacity of approximately 15–20 people. A small tree was growing out of the canoe when it was discovered, which would suggest that the canoe had been submerged in the lake for a considerable period of time. The canoe probably dates to the Late Woodland/Early Contact period (circa A.D. 1500–1800).

Thousand Island Lake lies within the traditional territory of the Ojibwe

people of the Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan. During consultation with tribal communities, evidence was presented demonstrating that the cultural item is considered to have historical, traditional, or cultural importance central to the Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan.

In March 2004, the Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan submitted a request to the Ottawa National Forest for repatriation of the canoe.

Officials of the Ottawa National Forest have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the cultural item has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Officials of the Ottawa National Forest also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the object of cultural patrimony and the Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the object of cultural patrimony should contact Loreen J. Lomax, Heritage Resources Program Manager, Ottawa National Forest Supervisor's Office, E6248 US–2, Ironwood, MI 49938, telephone (906) 932–1330, extension 313, before October 14, 2004. Repatriation of the object of cultural patrimony to the Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan may proceed after that date if no additional claimants come forward.

The Ottawa National Forest is responsible for notifying the Bay Mills Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; and Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan that this notice has been published.

Dated: July 22, 2004.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–20649 Filed 9–13–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and an associated funerary object in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains and associated funerary object were removed from Sandoval County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and the associated funerary object. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Fort McDowell Yavapai Nation, Arizona; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

In the late 1920s, human remains representing a minimum of 85 individuals were removed from Unshagi Pueblo in Sandoval County, NM, by either Edgar L. Hewett or George Woodbury. The human remains were donated to the Peabody Museum of Archaeology and Ethnology by Mr. Woodbury in 1963. No known individuals were identified. The one associated funerary object is a faunal bone fragment. A fish vertebrae necklace, believed by Peabody Museum of Archaeology and Ethnology to be from one of the burials described above, was reported as an unassociated funerary object in a NAGPRA inventory submitted by the Museum of Indian Arts and Culture, Santa Fe, NM, in November 1995.

Osteological characteristics indicate that the individuals are Native American. Interments from Unshagi most likely date to the Pueblo IV and Pueblo V periods (circa A.D. 1300–1620). Archeological evidence, including the presence of Jemez ceramic types, suggests that the site was occupied by ancestral Jemez people during this time. Jemez oral tradition provides names of individual residents of the pueblo, as well as site events and function. Unshagi continues as a sacred site and retains an active shrine for the Pueblo of Jemez today. Archeological evidence and oral tradition support shared group identity between Unshagi and the Pueblo of Jemez.

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 85 individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Pueblo of Jemez.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue,

Cambridge, MA 02138, telephone (617) 496–3702, before October 14, 2004. Repatriation of the human remains and associated funerary object to the Pueblo of Jemez may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Fort McDowell Yavapai Nation, Arizona; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: July 13, 2004.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–20645 Filed 9–13–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA. The human remains and associated funerary objects were removed from Shasta County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

An assessment of the human remains, and catalog records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Alturas Indian Rancheria, California; Pit River Tribe, California; Redding Rancheria, California; Round Valley Indian Tribes of the Round Valley Reservation, California; and Susanville Indian Rancheria, California.

In 1951, human remains representing at least one individual were removed from site CA-Sha–52 by C.W. Meighan and M.A. Baumhoff as part of the University of California Archaeological Survey. Site CA-Sha–52 is located on the west bank of the Fall River, approximately 4.5 miles north of Fall River Mills, Shasta County, CA. No known individual was identified. No associated funerary objects are present.

In 1953, human remains representing at least 17 individuals were removed from site CA-Sha–52 by J.A. Bennyhoff as part of the University of California Archaeological Survey. The 2,112 associated funerary objects are 110 dentalia shells, 2 snail shells, 1,509 olivella shell beads, 158 glycymeris shell beads, 4 limpet shell beads, 22 pine nut beads, 8 bone tools, 34 bone beads, 18 bone ornaments, 8 bear claw pendants, 14 obsidian points, 1 obsidian core, 1 obsidian knife, 24 obsidian flakes, 16 obsidian nodules, 15 scrapers, 6 jasper flakes, 1 antler flake, 2 pumice tools, 1 pestle, 2 stone objects, 20 lots of basketry and textile fragments, 133 charred seeds and tubers, 1 lot of red material, and 2 pieces of blue pigment.

The burial context at site CA-Sha–52 indicates that the human remains are Native American in origin. The presence of glycymeris, clamshell disc, and pine nut beads in midden contexts date the occupation of the site to the Protohistoric period (post-A.D. 1600). Oral history information about the Achumawi village of Pahtomah presented during consultation indicates that the geographical region in which CA-Sha–52 is located was occupied by Achumawi people. Archeological and linguistic evidence indicates that the Achumawi have occupied the area for more than 400 years. The present-day descendants of the Achumawi people are Alturas Indian Rancheria, California; Pit River Tribe, California; Redding Rancheria, California; Round Valley Indian Tribes of the Round Valley Reservation, California; and Susanville Indian Rancheria, California.

Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least 18 individuals of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 2,112 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Alturas Indian Rancheria, California; Pit River Tribe, California; Redding Rancheria, California; Round Valley Indian Tribes of the Round Valley Reservation, California; and Susanville Indian Rancheria, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA 94720, telephone (510) 642–6096, before October 14, 2004. Repatriation of the human remains and associated funerary objects to the Alturas Indian Rancheria, California; Pit River Tribe, California; Redding Rancheria, California; Round Valley Indian Tribes of the Round Valley Reservation, California; and Susanville Indian Rancheria. California may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology is responsible for notifying the Alturas Indian Rancheria, California; Pit River Tribe, California; Redding Rancheria, California; Round Valley Indian Tribes of the Round Valley Reservation, California; and Susanville Indian Rancheria, California that this notice has been published.

Dated: July 21, 2004

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–20647 Filed 9–13–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Springfield Science Museum, Springfield, MA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Springfield Science Museum, Springfield, MA. The human remains and associated funerary objects were removed from Hampden and Hampshire Counties, MA, and from unknown locations in western Massachusetts.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects information in a notice of inventory completion published in the **Federal Register** on August 20, 2003 (FR Doc. 03–21336, pages 50184–50186). This notice adds the Narragansett Indian Tribe of Rhode Island and the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts to the Native American tribes that were consulted, to whom a relationship of shared group identity can be traced, to whom repatriation may proceed, and who shall be notified that the notice was published.

Paragraph 3 of the August 20, 2003, notice is corrected by substituting the following paragraph:

A detailed assessment of the human remains was made by Springfield Science Museum professional staff in consultation with representatives of the Narragansett Indian Tribe of Rhode Island; Stockbridge Munsee Community, Wisconsin; and the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts.

The last four paragraphs (paragraphs 47–50) of the August 20, 2003, notice are corrected by substituting the following paragraphs:

Based on historic documentation, geographic location of the burials, and oral history, the human remains and associated funerary objects described above are most likely to be culturally affiliated with the present-day Narragansett Indian Tribe of Rhode Island; Stockbridge Munsee Community, Wisconsin; and the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts. Oral tradition and historic evidence indicate that the Narragansetts were involved in wampum production and distribution in western Massachusetts during the Contact and Early Historic periods. Historic evidence indicates that the Narragansetts engaged in battles in western Massachusetts during King Philip's War (1676–1677). All of the western Massachusetts sites described above lie within the known homeland of the Mohican Indians. Occupation of the area by the Mohican Indians is well documented for the Historic period, and Mohican oral history maintains that there is also prehistoric occupation in the Hudson and Connecticut River Valleys. The Mohican Indians are represented today by the Stockbridge Munsee Community, Wisconsin. Oral tradition indicates that the Connecticut River Valley was considered a sacred area by the Wampanoag Tribe of Gay Head. Historic evidence indicates that the Wampanoag Tribe of Gay Head engaged in battles in western Massachusetts during King Philip's War (1667–1677).

Officials of the Springfield Science Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 84 individuals of Native American ancestry. Officials of the Springfield Science Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 321 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Springfield Science Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Narragansett Indian Tribe of Rhode Island; Stockbridge Munsee Community, Wisconsin; and the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact David Stier, Director, Springfield Science Museum, 220 State Street, Springfield, MA 01103, telephone (413) 263- 6800, extension 321, before October 14, 2004. Repatriation of the human remains and associated funerary objects to the Narragansett Indian Tribe of Rhode Island; Stockbridge Munsee Community, Wisconsin; and the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts may proceed after that date if no additional claimants come forward.

The Springfield Science Museum is responsible for notifying the Narragansett Indian Tribe of Rhode Island; Stockbridge Munsee Community, Wisconsin; and the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts that this notice has been published.

Dated: August 12, 2004.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–20652 Filed 9–13–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Thomas Burke Memorial Washington State Museum, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Thomas Burke Memorial Washington State Museum, Seattle, WA, that meet the definition of "unassociated funerary objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 12 cultural items are 1 arm band, 1 headdress ornament, 1 rattle fragment, 2 potlatch rings, 2 fragments of a rattle, 1 oyster catcher rattle, 1 raven rattle, 3 fragments of raven rattles, and 1 knife handle.

The cultural items were collected by LT. George Emmons from southeastern Alaska at an unknown date and were given to the Thomas Burke Memorial Washington State Museum, Seattle, WA, in 1909. LT. Emmons described the items in his catalog notes: "This collection of shaman's articles of practice were found in an old decayed grave house about Icy Straits and belonged to a shaman of the Hoonah kow (Huna) long since deceased."

Museum documentation provides the following descriptions by Lieutenant Emmons of the 12 items.

Arm band (catalog number 938): "Armlet of spruce twigs, bent around and intertwined, worn on the arm above the elbow when dressed for practice."

Headdress ornament (catalog number 939): "Head-dress ornament of wood, shaped to represent the dorsal fin of the killer whale, the lower part is ornamentally carved as the head of the fish. It is painted in native mineral colors, red and graphite."

Rattle fragment (catalog number 940): "Circle of spruce twig, a portion of a circular rattle carried in practice."

Potlatch rings (catalog number 941and 942): "Two ornaments of finely woven spruce root consisting of a series of four and five cylinders, one above the other, surmounting the Shai-dai-kuke, the smaller and finer type of woven spruce root hat, but sometimes these ornaments surmounted a head dress. They are painted in native mineral colors."

Oyster catcher rattle (catalog number 943): "Spirit rattle of wood, shaped to represent an oyster catcher. On the back is represented a spirit canoe the bow of which is carved as a sculpin. The tentacles of the devil-fish forming the sides and stern. In the canoe is a spirit man having a bears head and holding a Tlingit in his arms. Carried when practicing about the sick and bewitched."

Raven rattle (catalog number 944): "General dance rattle of wood of the Tsimshian type, which is commonly used by the coast people upon ceremonial occasions. In form it represents a raven, on the back is a human figure reclining and in the rear near the handle a raven."

Rattle fragment (catalog number 945): "The fore portion of a spirit rattle, representing the head of a puffin or sea parrot, with the figure of a man in the rear."

Raven rattle fragment (catalog number 946): "Portion of the ornamental back of a rattle representing spirits."

Raven rattle fragment (catalog number 947): "Portion of the ornamental back of a wooden rattle, showing a ravens head and a reclining human figure."

Rattle fragment (catalog number 948): "Portion of a spirit rattle, representing a sculpin."

Knife handle (catalog number 949): "Handle of wood of carving knife."

Consultation evidence provided by representatives of the Hoonah Indian Association indicates that, on the basis of provenience, the 12 cultural items meet the NAGPRA definition of unassociated funerary objects, and that the Hoonah Indian Association has a relationship of shared group identity that can be traced historically and prehistorically between members of a present-day Indian tribe and an identifiable earlier group. Lieutenant Emmons specifically identified the provenience as "an old decayed grave house" and the tribal affiliation as "Hoonah kow (Huna)."

Officials of the Thomas Burke Memorial Washington State Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 12 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Thomas Burke Memorial Washington State Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Hoonah Indian Association.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Dr. James D. Nason, Chairman, Repatriation Committee, Thomas Burke Memorial Washington State Museum, Box 353010, University of Washington, Seattle, WA 98195–3010, telephone (206) 543–9680, before October 14, 2004. Repatriation of the unassociated funerary objects to the Hoonah Indian Association may proceed after that date if no additional claimants come forward.

The Thomas Burke Memorial Washington State Museum is responsible for notifying the Hoonah Indian Association that this notice has been published.

Dated: August 2, 2004.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–20654 Filed 9–13–04; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. 1205–6]

Proposed Modifications to the Harmonized Tariff Schedule of the United States

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation, request for comments.

DATES: Effective September 8, 2004.

SUMMARY: On September 8, 2004, the Commission instituted investigation No. 1205–6, Proposed Modifications to the Harmonized Tariff Schedule of the United States, pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3005). Section 1205 directs the Commission to keep the Harmonized Tariff Schedule of the United States (HTS) under continuous review and to recommend to the President modifications to the HTS (1) when amendments to the International Convention on the Harmonized Commodity Description and Coding System (Harmonized System), and the Protocol thereto, are recommended by the World Customs Organization (WCO) (formerly known as the Customs Cooperation Council) for adoption, and (2) as other circumstances warrant. The Commission's report will set forth the proposed changes and indicate the necessary changes in the HTS that would be needed to maintain conformity between the HTS and the International Harmonized System. The report will also include other appropriate explanatory information on the proposed changes. It may additionally recommend modifications to promote uniformity in the application of the HS Convention and also in the presentation of the HTS to alleviate unnecessary administrative burdens. In accordance with section 1206 of the 1988 Act (19 U.S.C. 3006), the President may proclaim the tariff modifications recommended by the Commission, following Congressional layover and consultation.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director (202–205–2592), Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission, Washington, DC 20436. Hearing impaired individuals are advised that information on this investigation can be obtained by contacting the TDD terminal on (202) 205–1810.

Background: The majority of the proposed changes included in this

investigation are the result of the work of the WCO and its Harmonized System Committee (HSC) to update and clarify the Harmonized System nomenclature, as part of the WCO's long-term program to periodically review the nomenclature structure. In accordance with Article 16 of the Harmonized System Convention, the WCO has recommended the adoption of certain modifications to the (HS). The changes are due to become effective in January 2007.

The Commission plans to prepare and make available a draft preliminary report, a preliminary report and a final report. The draft preliminary report will be made available to the public on or about September 15, 2004, in the Office of the Secretary, Room 112, United States International Trade Commission, 500 E Street, SW., Washington DC 20436 (telephone 202–205–2000), and will also be posted on the Commission's Web site, *http://www.usitc.gov*. The draft preliminary report will describe the changes proposed to conform the HTS with the WCO's recommendations, and reflect in the HTS certain other decisions taken by the HSC.

To assist the public in understanding the proposed changes and in developing comments, the Commission will include, in the draft preliminary report, the preliminary report and the final report, a non-authoritative cross-reference table linking the proposed tariff classes to corresponding current tariff classes. Persons using the successive versions of this table should be aware that the cross-references shown in the Commission's table are subject to change during the course of preparing for implementation of the January 2007 changes. The Bureau of Customs and Border Protection has domestic legal authority for tariff classification and may provide information, both during the course of the investigation and after the Commission's final report is submitted, that indicates different or additional tariff classifications of some goods. Moreover, the WCO Secretariat will eventually issue its own advisory cross-reference table between the 2002 HS and the 2007 HS. The WCO table may be released by the Commission later in the Commission's investigation, along an explanation of differences between the WCO and Commission's tables. Such differences typically result from differences between the WCO and U.S. classifications of goods.

The Commission will forward its preliminary report to the United States Trade Representative (USTR) on or about February 28, 2005. The preliminary report will include proposed modifications to (1) conform the HTS to recommended Harmonized System amendments, (2) promote uniform application of the Harmonized System by conforming the HTS with decisions of the WCO and (3) alleviate administrative burdens, as well as other matters that may be recommended. It will take into account public comments received by November 1, 2004 (*see* below). The preliminary report will be posted on the Commission's Web site. The public is invited to submit any further comments during the subsequent 30 days; any comments received during that period will be forwarded to the USTR.

In order that it may consider any issues that arise in World Trade Organization negotiations regarding the restatement of U.S. tariff treatment, the Commission is scheduled to submit its final report to the President on March 15, 2006.

Written Submissions: No public hearing is planned. However, interested parties are invited to submit written statements or suggestions concerning the matters being addressed by the Commission on this investigation. Submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. To be assured of consideration by the Commission, written statements related to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on November 1, 2004. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential business information must be deleted (*see* the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (*see* Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*.)

Any submissions that contain confidential business information (CBI) must also conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages clearly be marked as to whether they are the "confidential" or "non-confidential" version, and that the CBI be clearly identified by means of brackets. All written submissions, except for CBI, will be made available for inspection by interested parties.

The Commission may include some or all of the CBI it receives in the preliminary and final reports it sends to the President. However, the Commission will not publish CBI in the public version of the final report in a manner that could reveal the operation of the firm supplying the information. The public version of the final report will be made available to the public on the Commission's Web site.

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 the above mentioned Internet site.

List of Subjects

Tariffs/HTS, Harmonized System, WCO, and Imports.

By order of the Commission.

Issued: September 9, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–20675 Filed 9–13–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[Docket No. ATF 12N; ATF O 1120.4]

Delegation Order—Authority To Make Determinations on Applications for Relief From Federal Firearms and/or Explosives Disabilities

1. *Purpose.* This order delegates certain authorities of the Director to subordinate Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) officials to make determinations on applications for relief from Federal firearms and/or explosives disabilities.

2. *Cancellation.* This order cancels ATF 1100.75C, Delegation Order—Authority to Make Determinations on Applications for Restoration of Federal Firearms and/or Explosives Privileges, dated 9/17/2003.

3. *Delegations.* Under the authority vested in the Director, ATF, by Department of Justice Final Rule [AG Order No. 2650–2003] as published in the **Federal Register** on January 31, 2003, and by Title 28 CFR 0.130 and 0.131, the following authorities are delegated:

a. *Firearms.* The Assistant Director (Enforcement Programs and Services) is to make determinations on applications for relief from Federal firearms disabilities.

b. *Explosives.* The Chief, Arson and Explosives Programs Division, is to make determinations on applications for relief from Federal explosives disabilities.

4. *Redelegation.* The authorities outlined in paragraphs 3.a. and 3.b. above, may not be redelegated.

5. *Questions.* Questions regarding this order should be addressed to the Chief, Firearms Programs Division at 202–927–7770, or the Chief, Arson and Explosives Programs Division at 202–927–7930.

Date Signed: September 1, 2004.

Carl J. Truscott,

Director.

[FR Doc. 04–20636 Filed 9–13–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Number D–11069]

Proposed Amendment to Prohibited Transaction Exemption 84–24 (PTE 84–24) for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, Investment Companies and Investment Company Principal Underwriters

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of proposed amendment to PTE 84–24.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 84–24 (49 FR 13208 (April 3, 1984) as corrected at 49 FR 24819 (June 15, 1984)). PTE 84–24 is a class exemption that provides relief for certain transactions relating to the purchase, with plan assets, of investment company securities or insurance or annuity contracts, and the payment of associated sales commissions to insurance agents or brokers, pension consultants, or investment company principal underwriters that are parties in interest with respect to such plan. Currently, relief is not available under PTE 84–24 if an affiliate of the insurance agent or broker, pension consultant, insurance company, or investment company principal underwriter is a plan trustee that has investment discretion over any of the assets of the plan. If this proposed amendment is adopted, PTE 84–24 would extend relief to transactions relating to the purchase by plans of investment company securities or insurance or annuity contracts, and the receipt of associated sales commissions by an insurance agent or broker, pension consultant, or investment company principal underwriter in situations where an affiliate of the insurance agent or broker, pension consultant, or investment company principal underwriter is a trustee with investment discretion over plan assets that are not involved in the transaction.

DATES: If adopted, the proposed amendment will be effective as of the date the granted amendment is published in the **Federal Register**. Written comments and requests for a public hearing should be received by the Department on or before November 15, 2004.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, (attention: D–11069). Interested persons are also invited to submit comments and/or requests for a hearing by the end of the comment period to the Employee Benefits Security Administration via fax to (202) 219–0204 or by electronic mail to: *moffitt.betty@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher Motta, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8544 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 84–24. PTE 84–24 provides an exemption from the restrictions of section 406(a)(1)(A) through (D) and section 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) [1] and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code.

The Department is proposing to amend the above-described exemption on its own motion, pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[2]

A. General Background

The prohibited transaction provisions of the Act generally prohibit transactions between a plan and a party in interest (including a fiduciary) with respect to such plan. Specifically, section 406(a)(1)(A) through (D) of the Act states that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

(A) Sale or exchange, or leasing, of any property between the plan and a party in interest;

(B) Lending of money or other extension of credit between the plan and a party in interest;

(C) Furnishing of goods, services, or facilities between the plan and a party in interest; or

(D) Transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan.

In addition, section 406(b) of ERISA provides that a fiduciary with respect to a plan shall not—

(1) Deal with the assets of a plan in his own interest or for his own account,

(2) In his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or

(3) Receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

Accordingly, unless a statutory or administrative exemption is applicable, the purchase with plan assets of investment company securities or insurance or annuity contracts from a party in interest would violate section 406(a) of ERISA. In addition, the receipt

[1] References to section 406 of ERISA as they appear throughout this proposed amendment should be read to refer as well to the corresponding provisions of section 4975 of the Internal Revenue Code of 1986 (the Code).

[2] Section 102 of the Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 [1996] generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Internal Revenue Code of 1986 (the Code) to the Secretary of Labor.

of sales commissions by a pension consultant or insurance agent from an insurance company in connection with the purchase of insurance contracts by a plan where such pension consultant or insurance agent is a fiduciary with respect to the plan violates section 406(b) of ERISA.

B. Regulatory Impact Analysis

Executive Order 12866

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This proposed amendment has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this proposed amendment is not a "significant regulatory action" under Executive Order 12866, section 3(f). Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

Paperwork Reduction Act

This Notice of Proposed Rulemaking is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain a "collection of information" as defined in 44 U.S.C. 3502(3).

C. Description of Existing Relief

PTE 84–24 provides relief for certain classes of transactions involving purchases with plan assets of insurance or annuity contracts and of securities issued by registered investment companies, and the receipt of sales commissions in connection therewith. Section I and section II of PTE 84–24 provide retroactive and prospective relief for covered transactions. Section III describes the transactions covered by the class exemption as follows: (a) The direct or indirect receipt by an insurance agent or broker or a pension consultant of a sales commission from an insurance company in connection with the purchase, with plan assets of an insurance or annuity contract; (b) the receipt of a sales commission by a principal underwriter for an investment company registered under the Investment Company Act of 1940 (hereinafter, an investment company) in connection with the purchase, with plan assets, of securities issued by an investment company; (c) the effecting by an insurance agent or broker, pension consultant or investment company principal underwriter of a transaction for the purchase, with plan assets, of an insurance or annuity contract or securities issued by an investment company; (d) the purchase, with plan assets, of an insurance or annuity contract from an insurance company; (e) the purchase, with plan assets, of an insurance or annuity contract from an insurance company which is a fiduciary or a service provider (or both) with respect to the plan solely by reason of the sponsorship of a master or prototype plan; and (f) the purchase, with plan assets, of securities issued by an investment company from, or the sale of such securities to, an investment company or an investment company principal underwriter, when such investment company, principal underwriter, or the investment company investment adviser is a fiduciary or a service provider (or both) with respect to the plan solely by reason of: (1) The sponsorship of a master or prototype plan; or (2) the provision of nondiscretionary trust services to the plan; or (3) both (1) and (2).

Section IV contains general conditions applicable to all transactions described in section III. Section V of the class exemption contains conditions specific to transactions described in section III(a) through (d). In relevant part, section V(a)(1) provides that the insurance agent or broker, pension consultant, insurance company, or investment company principal underwriter may not be a trustee of the plan (other than a nondiscretionary trustee who does not render investment advice with respect to any assets of the plan).[3] In addition, section V(a)(3) provides that such agent or broker, pension consultant, insurance company or principal underwriter may not be a fiduciary who is expressly authorized in writing to manage, acquire or dispose of the assets of the plan on a discretionary basis.

Section VI of the class exemption defines certain terms contained in the class exemption. Specifically, section VI(b) defines the terms "insurance agent or broker," "pension consultant," "insurance company," "investment company," and "principal underwriter" to include such persons and any affiliates thereof. Thus, currently, PTE 84–24 does not permit a party to engage in a transaction with a plan if such party or its affiliate is a discretionary trustee or investment manager with respect to the plan.

The Department and the Internal Revenue Service (the Service) previously took the position that in certain situations PTE 77–9, which was later amended and superceded by PTE 84–24, was available for the purchase of insurance or annuity contracts through an agent or broker affiliated with an investment manager that was expressly authorized in writing to manage, acquire or dispose of a specific portion of the plan's assets.[4] In this regard, it was the view of the Department and the Service that the class exemption extended relief to a plan's purchase of an insurance or annuity contract through an agent or broker affiliated with an entity that managed certain of the plan's assets to the extent that the investment manager was not, with respect to the transaction, a fiduciary expressly authorized in writing to manage, acquire, or dispose of, on a discretionary basis, the assets of the plan involved in the purchase transaction.

This proposed amendment, if granted, will incorporate in the class exemption the position the Department took in the Cardon Letter regarding an insurance agent or broker, pension consultant, or investment company principal underwriter that is affiliated with an investment manager for plan assets not involved in the purchase transaction. In this regard, if this proposed amendment is granted, the limitation in section (V)(a)(1) with respect to trustees will not apply where an insurance agent or broker, pension consultant, or

[3] Nothing herein should be construed to imply that a nondiscretionary trustee is not a fiduciary under the Act. See 29 U.S.C. § 1103(a)(1). A plan may expressly provide that a trustee is subject to the direction of a named fiduciary who is not a trustee, in which case the trustee shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to the Act.

[4] See letter from the Department of Labor and the Internal Revenue Service to John A. Cardon, Esq., *et al.*, part 6. (October 31, 1977 (the Cardon Letter)).

investment company principal underwriter is affiliated with a trustee having investment discretion over plan assets that are not involved in such purchase. Accordingly, the exemption, if finalized, will be available to an insurance agent or broker, pension consultant, or investment company principal underwriter that is affiliated with a trustee having investment discretion over plan assets not involved in the transaction on the same basis as it is currently available to the affiliates of entities that provide investment management services to plans.

D. Discussion of the Proposed Exemption

The Department is proposing this amendment in response to the consolidation that has occurred in the financial services industry. In this regard, insurance agents, brokers, pension consultants, and principal underwriters are now frequently affiliated with entities that serve as trustees to plans. These affiliations evolve as such entities engage in the normal course of doing business.

The Department recognizes that it is not uncommon for a plan trustee to have investment discretion solely with respect to a specific portion of the plan's assets. Pursuant to such an arrangement, the portion of the plan's assets that is not under the control of the trustee may be managed by a plan fiduciary that is independent of such trustee (and its affiliates). In these situations, the Department believes that there would be minimal, if any, risk of abuse or loss to a plan and its participants and beneficiaries to the extent that an independent plan fiduciary directed the effectuation of a covered transaction through an affiliate of such trustee. In this regard, the Department believes that the conditions contained in PTE 84–24, including the review of information required to be disclosed to the independent fiduciary and the subsequent approval of the transaction by such fiduciary, are sufficient to protect the interests of affected plans and their participants and beneficiaries. Therefore, the Department is proposing to amend PTE 84–24 to permit a party to engage in transactions described in section III (a) through (d) with a plan if the party is affiliated with a trustee or investment manager who does not have discretionary authority or control with respect to the plan assets involved in the transaction other than as a nondiscretionary trustee.

The Department is proposing to modify section V(g) of PTE 84–24 to clearly state that a party may use the exemption even if such party has an affiliate that serves as a nondiscretionary trustee, or a directed trustee, with respect to the plan assets involved in the transaction.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary, or other party in interest or disqualified person with respect to a plan, from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of ERISA and 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) If granted, the proposed amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Request

The Department invites all interested persons to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments received will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection at the above address.

Proposed Amendment

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, 32847, August 10, 1990), the Department proposes to amend PTE 84–24 as set forth below:

1. Section V(a) is amended to read: "(a) The insurance agent or broker, pension consultant, insurance company, or investment company principal underwriter is not (1) a trustee of the plan (other than a nondiscretionary trustee who does not render investment advice with respect to any assets of the plan); (2) a plan administrator (within the meaning of section 3(16)(A) of the Act and section 414(g) of the Code), (3) a fiduciary who is expressly authorized in writing to manage, acquire or dispose of the assets of the plan on a discretionary basis, or (4) for transactions described in sections III (a) through (d) entered into after December 31, 1978, an employer any of whose employees are covered by the plan. Notwithstanding the above, an insurance agent or broker, pension consultant, insurance company, or investment company principal underwriter that is affiliated with a trustee or an investment manager (within the meaning of section VI(b)) with respect to a plan may engage in a transaction described in section III(a) through (d) of this exemption on behalf of the plan if such trustee or investment manager has no discretionary authority or control over the plan assets involved in the transaction other than as a nondiscretionary trustee."

2. Section V(g) is amended to read: The term "nondiscretionary trust services" means custodial services, services ancillary to custodial services, none of which services are discretionary, duties imposed by any provisions of the Code, and services performed pursuant to directions in accordance with ERISA § 403(a)(1). The term "nondiscretionary trustee" of a plan means a trustee whose powers and duties with respect to the plan are limited to the provision of nondiscretionary trust services. For purposes of this exemption, a person who is otherwise a nondiscretionary trustee will not fail to be a nondiscretionary trustee solely by reason of his having been delegated, by the sponsor of a master or prototype plan, the power to amend such plan.

Signed at Washington, DC, this 9th day of September, 2004.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 04–20699 Filed 9–13–04; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, August 20, 2004, through September 2, 2004. The last biweekly notice was published on August 31, 2004, (69 FR 53098).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention

at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by email to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New York

Date of amendment request: August 27, 2004.

Description of amendment request: The licensee proposed to amend the Oyster Creek Nuclear Generating Station (OCNGS) Technical Specifications (TSs) regarding the safety limit minimum critical power ratio (SLMCPR) to reflect the results of cycle-specific calculations performed for the next fuel cycle (i.e., Cycle 20), using Nuclear Regulatory Commission (NRC)-approved methodology documented in Topical Report NEDE–24011–P–A–14, "General Electric Standard Application for Reactor Fuel" (GESTAR II), updated to Amendment 25. Specifically, the licensee proposed to revise TS Section 2.1.A, changing the SLMCPR values from 1.10 to 1.12 for three-recirculation-loop operation, and from 1.09 to 1.10 for four- or five-recirculation-loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. SLMCPR values, and their derivation using NRC-approved methods, do not change the design or operating procedures of OCNGS, and have no role on the occurrence of an initiating event of an accident or transient. The basis of the SLMCPR is to ensure no mechanistic fuel damage will occur if the limit is not violated. The new SLMCPR values will preserve the existing margin to transition boiling (i.e., in the event of an accident or transient, the amount of fuel damaged would not be increased as a result of the new SLMCPR values). Furthermore, the proposed new SLMCPR values do not lead to, nor do they arise as a result of, plant design or procedural changes. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The new SLMCPR values for OCNGS Cycle 20 core have been calculated in accordance with the methods and procedures described in an NRC-approved topical report. The proposed new SLMCPR values do not lead to, nor do they arise as a result of, plant design or procedural changes. The changes do not involve any new method for operating the facility and do not involve any facility modifications. As a result, no new initiating events or transients could develop from the proposed changes. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No. The margin of safety as defined in OCNGS's licensing basis will remain the same. The new cycle-specific SLMCPR values are calculated using NRC-approved methods and procedures that are in accordance with the current fuel

design and licensing criteria. The SLMCPR values will remain high enough to ensure that greater than 99.9% of all fuel rods in the core are expected to avoid transition boiling if the limits are not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the above review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for licensee: Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LCC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Richard J. Laufer.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 27, 2004.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) based on the radiological dose analysis margins obtained by using an alternative source term consistent with 10 CFR 50.67. Specifically, the amendment would revise TS 3/4.7.7, "Control Room Emergency Air Filtration System," surveillance requirements and delete TS 3/4.7.8, "Control Room Envelope Pressurization System."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a significant increase in the probability or consequence of an accident previously analyzed. The Millstone Unit 3 Control Room Emergency Air Filtration System only functions following the initiation of a design basis radiological accident. Therefore, the change to the value used for methyl iodide penetration test acceptance criteria following a design basis accident will not increase the probability of any previously analyzed accident. The Millstone Unit 3 Control Room Envelope Pressurization System is no longer credited in the accident analyses described in the Alternative Source Term (AST) implementation analyses. In accordance with AST implementation analyses, the requirements contained in this Specification do not meet any of 10 CFR 50.36(c)(2)(ii) criteria on items for which Technical Specifications must be established. Deletion of this Technical Specification will not increase the probability of occurrence of any previously analyzed accident and does not impact the consequences of any evaluated accident since it is no longer analytically credited. The Millstone Unit 3 containment and the containment systems function to prevent or control the release of radioactive fission products following a postulated accident. Therefore, the change to the value used for the leakage rate acceptance criteria for all penetrations that are secondary containment bypass leakage paths following a design basis accident will not increase the probability of any previously analyzed accident and is limited to ensure it does not increase any accident consequence.

These systems are not initiators of any design bases accident. Revised dose calculations, which take into account the changes proposed by this amendment and the use of the alternative source term, have been performed for the Millstone Unit 3 design basis radiological accidents. The results of these revised calculations indicate that public and control room doses will not exceed the limits specified in 10 CFR 50.67 and Regulatory Guide 1.183. There is not a significant increase in predicted dose consequences for any of the analyzed accidents. Therefore, the proposed changes do not involve a significant increase in the consequences of any previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The implementation of the proposed changes does not create the possibility of an accident of a different type than was previously evaluated in the UFSAR [updated final safety report]. Although the proposed changes could affect the operation of the Control Room Emergency Air Filtration System, and containment and the containment systems following a design basis radiological accident, none of these changes can initiate a new or different kind of accident since they are only related to system capabilities that provide protection from accidents that have already occurred. These changes do not alter the nature of events postulated in the UFSAR nor do they introduce any unique precursor mechanisms. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from those previously analyzed.

3. Involve a significant reduction in the margin of safety.

The implementation of the proposed changes does not reduce the margin of safety. The proposed changes for the Control Room Emergency Air Filtration System, and containment and the containment systems do not affect the ability of these systems to perform their intended safety functions to maintain dose less than the required limits during design basis radiological events. The revised dose calculations also indicate that the change to the containment depressurization times will continue to maintain the dose to the public and control room operators less than the required limits. The radiological analysis results, when compared with the revised TEDE acceptance criteria, meet the applicable limits. These acceptance criteria have been developed for application to analyses performed with alternative source terms. These acceptance criteria have been developed for the purpose of use in design basis accident analyses such that meeting the stated limits demonstrates adequate protection of public health and safety. It is thus concluded that the margin of safety will not be reduced by the implementation of the changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Waterford, CT 06141–5127.

NRC Section Chief: James W. Clifford.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: March 22, 2004.

Description of amendment request: The amendments would revise the Catawba Nuclear Station Facility Operating Licenses and Technical Specifications (TSs) to change the surveillance frequency on selected Engineered Safety Features Actuation System (ESFAS) slave relays from 92 days to 18 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change to the TS does not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered. Only the slave relay test interval is changed. The proposed change will not modify any system interface and could not increase the likelihood of an accident since these events are independent of this change. The proposed activity will not change, degrade, or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the UFSAR [Updated Final Safety Analysis Report]. Therefore, the proposed amendments do not result in any increase in the probability or consequences of an accident previously evaluated.

(2) The proposed license amendments do not create the possibility of a new or different

kind of accident from any accident previously evaluated.

This change does not alter the performance of the affected systems. The slave relays will still be tested every 18 months. Changing the surveillance frequency for the slave relays will not create any new accident initiators or scenarios. Periodic surveillance of these instruments will detect significant degradation in the channel characteristic. Implementation of the proposed amendments does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed license amendments do not involve a significant reduction in a margin of safety.

The surveillance test frequency is relaxed for certain slave relays because of demonstrated high reliability of the relay and its insensitivity to any short term wear or aging effects. Based on the above, it is concluded that the proposed license amendment request does not result in a reduction in a margin with respect to plant safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Mary Jane Ross-Lee, Acting.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: April 6, 2004.

Description of amendment request: The amendments would revise the Catawba Nuclear Station Technical Specifications (TSs) to allow a diesel generator battery to remain operable with no more than one cell less than 1.36 Volts DC on float charge.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The DC electrical power system provides normal and emergency DC electrical power for the diesel generators, emergency auxiliaries, and control and switching during all modes of operation. This change will not affect or degrade the ability of the DC Electrical Power Systems to perform their specified safety function.

The only effect on systems, structures and components (SSCs) by this change is that one DG battery with one cell less than 1.36 volts the system will still be considered operable. With one or more DG batteries with one or more battery cell(s) not within limits of level or temperature, sufficient capacity to supply the required load for the DG is not assumed, and the corresponding DC electrical power subsystem must be declared inoperable immediately. With one or more DG batteries with two or more battery cells not within limits of voltage, sufficient capacity to supply the required load for the DG is not assumed, and the corresponding DC electrical power subsystem must be declared inoperable immediately.

Surveillance (SR) 3.8.4.2 is being relocated to TS 3.8.6 as a new surveillance and the wording of the Bases section is being revised for clarity as follows: "For this surveillance, a minimum of two cells shall be tested every seven days. The cells selected for testing shall be rotated on a monthly basis." The new SR 3.8.6.5 will check the DG battery cell voltage on selected cells to ensure they are greater than or equal to 1.36 volts on a seven day frequency. This test will continue to assure that the batteries are available to perform their design functions.

This amendment will not change any previously evaluated accidents such as "Loss of Non-Emergency AC Power to Station Auxiliaries (Blackout)", "Loss of Coolant Accident (LOCA)," and "LOCA/Blackout." The prevention and mitigation of these accidents is also not affected by this change.

The likelihood of a malfunction of the batteries is not increased by this change in the surveillances. The systems will continue to be able to perform their design functions of supplying emergency power during the evaluated accidents listed above. Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This change does not involve a physical alteration to the plant (*i.e.*, no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The change does not alter assumptions made in the safety analysis or licensing basis. This change will not affect or degrade the ability of the DC Electrical Power Systems to perform their specified safety function. Therefore, the change does not create the possibility of a new or different kind of credible accident from any accident previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

No. Assuming that one cell in a 94-cell battery is at a full-reverse voltage of −1.80V, the remaining cells would be required to supply 106.80V, or 1.1484V/cell, in order to maintain a minimum battery terminal voltage of 105.0V. The manufacturer has extrapolated new sizing factors for an end-voltage of 1.1484V and used the new sizing factors to recalculate the battery capacity required to satisfy the design basis requirements. The load profile data and sizing methodology was taken from 125 Vdc Diesel Auxiliary Power Battery Sizing Calculations. Considering all possible loading scenarios, the minimum capacity margin available with one cell assumed to be in full reversal (−1.80V) was calculated to be 34%. This assumes the battery is at an end-of-life capacity of 80%, the electrolyte temperature is at the design-minimum of 60 °F, and that no cells are jumpered out.

Based on the discussion above and the results of the battery sizing calculations, a DG battery remains operable and fully capable of satisfying its design requirements with one cell < 1.36V on an indefinite basis. Therefore, the proposed changes listed above do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Mary Jane Ross-Lee, Acting.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: September 29, 2003.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) 3.7.15 spent fuel pool (SFP) storage criteria based upon fuel type, fuel enrichment, burnup, cooling time and partial credit for soluble boron in the SFP. This amendment allows for the safe storage of fuel assemblies with a nominal enrichment of Uranium-235 up to 5.00 weight percent. In addition, this amendment decreases the required soluble boron credit, which provides an acceptable margin of subcriticality in the McGuire Nuclear Station (McGuire), Units 1 and 2, spent fuel storage pools.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration, is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

This license amendment transitions the McGuire SFP from conformance with a

temporary exemption to 10 CFR 70.24 to compliance with 10 CFR 50.68(b). This regulation requires that the SFP remain subcritical if flooded with unborated water and remain 5 percent subcritical with credit for soluble boron. The SFP will be maintained with a minimum TS required soluble boron concentration that would provide substantial margin to criticality. The criticality analysis takes into consideration fuel type, fuel enrichment, fuel burnup, spent fuel cooling time and partial credit for soluble boron.

There is no significant increase in the probability or consequence of a fuel assembly drop accident in the SFP as a result of this amendment. The method of handling fuel assemblies in the SFP is not affected by the changes made to the criticality analysis for the SFP or by the TS changes. The handling of fuel assemblies during normal operation is unchanged, since the same equipment and procedures will be used.

There is no significant increase in the probability or consequence of the accidental misloading of spent fuel assemblies. Fuel assembly placement and storage will be controlled in accordance with approved fuel handling procedures and other approved processes to ensure compliance with the TS requirements. Analyses demonstrate that the pool will remain subcritical following an accidental misloading because the SFP contains an adequate margin of soluble boron concentration.

The mitigating actions as the result of a loss of SFP cooling are not changed. The heat up rate in the SFP is a nearly linear function of the fuel decay heat load. The fuel decay heat load will not be significantly affected since the number of fuel assemblies and the fuel burnups are unchanged. In the unlikely event that all pool cooling is lost, sufficient time will still be available for the operators to provide alternate means of cooling before the onset of pool boiling.

A decrease in pool water temperature from a large emergency makeup would cause an increase in water density, increasing fuel bundle reactivity. However, the margin provided by the TS required minimum boron concentration, above the concentration required to maintain 5 percent subcritical, will compensate for the increased fuel bundle reactivity which could result from a decrease in SFP water temperature.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

This license amendment regarding fuel storage requirements, nominal fuel enrichment, and the credit for soluble boron in the SFP specified by TS 4.3 will have no effect on normal pool operations and maintenance. There are no changes in equipment design or in plant configuration.

Criticality and other SFP accidents have been analyzed in the McGuire's Updated Final Safety Analysis Report and Criticality Analysis reports. Specific accidents considered and evaluated include fuel assembly drop, accidental misloading, and significant changes in SFP water temperature. Region 1 of the SFP for both units had previously been updated with new replacement in-kind fuel racks utilizing boral neutron poison. As a result of this amendment no credit will be taken for the degrading boraflex neutron poison in Region 2 of the SFP.

Therefore, the proposed amendment will not result in the possibility of a new or different kind of accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed TS changes and the resulting spent fuel storage operating limits will provide adequate safety margin to ensure that the stored fuel assembly array will always remain subcritical. Those limits are based on a plant-specific criticality analysis. This methodology takes partial credit for soluble boron in the SFP and requires conformance with 10 CFR 50.68(b).

Therefore, the proposed changes in this license amendment will not result in a significant reduction in the facility's margin of safety.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Mary Jane Ross-Lee, Acting.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: June 24, 2004.

Description of amendment request: The proposed amendment would modify the Safety Analysis Report (SAR) by increasing the maximum hypothetical accident (MHA) doses to the control room operators, due to an increase in the allowable unfiltered in-leakage into the control room envelope. However, the new MHA doses would still be within NRC-approved guidance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes adopt new dose acceptance criteria in Regulatory Guide 1.195 for calculating radiological consequences of design basis accidents. The proposed change increases the allowable unfiltered inleakage to 52 scfm [standard cubic feet per minute] which increases the licensing basis thyroid doses for ANO [Arkansas Nuclear One] operators to 49.9 rem for the ANO–1 [Arkansas Nuclear One, Unit 1] Safety Analysis Report MHA. The new MHA doses are within NRC approved guidance. The proposed change does not impact the probability of an accident previously evaluated in the SAR.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The accident analysis performed in establishing [the] new control room unfiltered inleakage value of 52 scfm were primarily performed using the existing licensing basis for the ANO–1 SAR. However, a new thyroid dose acceptance criterion of 50 rem was used per Regulatory Guide 1.195 instead of the previous Standard Review Plan thyroid dose limit of 30 rem. Dose consequences of non-LOCA [non-loss-of-coolant accident] events (except for the Fuel Handling Accident) were not historically calculated in the ANO–1 SAR. The doses had been assumed to be a fraction of the doses resulting from the MHA. New analyses of these control room doses confirmed them to be bounded by the revised MHA control room doses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Even though the ANO–1 SAR reported doses for the MHA are being increased in the proposed change, they are still within the NRC acceptance criteria of Regulatory Guide 1.195. Other assumptions are consistent with the current ANO–1 licensing basis or previously NRC approved assumptions within the industry. The increase in allowable in leakage by the proposed change maintains the operator doses within GDC [General Design Criteria] 19 limits with no compensatory measures to reduce thyroid uptake.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 28, 2004.

Description of amendment request: The proposed amendment deletes the requirements from the technical specifications (TSs) to maintain hydrogen recombiners and hydrogen monitors. Licensees were generally required to implement upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide (RG) 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. The revised 10 CFR 50.44, "Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors," eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration determination (NSHC) for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated June 28, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. Category 1 in RG 1.97 is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents.

The regulatory requirements for the hydrogen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, and removal of the hydrogen monitors from TS will not prevent an accident management strategy through the use of the severe accident management guidelines (SAMGs), the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. Removal of hydrogen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

Acting NRC Section Chief: Daniel S. Collins.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: June 7, 2004.

Description of amendment request: The proposed changes would reflect an expanded operating domain resulting from implementation of Average Power Range Monitor/Rod Block Monitor/Technical Specifications/Maximum Extended Load Line Limit Analysis (ARTS/MELLLA). The average power range monitor (APRM) flow-biased flux scram setpoint and the APRM and rod block monitor (RBM) flow-biased rod block trip setpoints would be revised to permit operation in the MELLLA region. In addition, the APRM scram and rod

block trip setdown requirement would be replaced by more direct power and flow-dependent thermal limits to reduce the need for APRM gain adjustments and to allow more direct thermal limits administration during operation at other than rated conditions. The amendment would also change the methods used to evaluate annulus pressurization and jet loads resulting from the postulated recirculation suction line break.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Proposed Change of APRM/RBM Setpoints

The APRM and RBM are not involved in the initiation of any accident and the APRM flow-biased simulated thermal power scram and rod block functions are not credited in any Hope Creek Generating Station safety analyses. The revised evaluation of the rod withdrawal error event will continue to demonstrate acceptable results without crediting operation of the RBM. Therefore, the proposed change would have no effect on the probability of an accident previously evaluated, and the increase in consequences of a previously-evaluated accident, if any, would not be significant.

Proposed Replacement of APRM Scram and Rod Block Trip Setdown Requirements by More Direct Power and Flow Dependent Thermal Limits

Neither the APRM scram and rod block setdown requirements, nor the power and flow-dependent thermal limits have any impact on accident initiating mechanisms. Adjustments to the thermal limits will be made using NRC-approved methods such that the fuel thermal and mechanical design bases will be maintained. Therefore, the proposed change will have no effect on the probability of an accident previously evaluated, and because the design bases will be maintained, an increase in the consequences of a previously-evaluated accident, if any, would not be significant.

Proposed Change in the Methods Used To Evaluate Annulus Pressurization and Jet Loads Resulting From the Postulated Recirculation Suction Line Break

The proposed change would modify the method of accident analysis for selected scenarios, and as such could have no impact on the probability of an accident previously evaluated. Since the loads resulting from the recirculation suction line break are demonstrated to be bounded by the current licensing basis, the increase in consequences of a previously-evaluated accident, if any, would not be significant.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Proposed Change of APRM/RBM Setpoints

Changing the formulation of the flow-biased APRM rod block and scram trip setpoints and the RBM flow biased rod block trip setpoint would not change their respective functions and manner of operation. The change would not introduce a sequence of events or introduce a new failure mode that would create a new or different type of accident. Operating within the expanded power flow map would not require any systems, structures or components to function differently. Therefore, the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Proposed Replacement of APRM Scram and Rod Block Trip Setdown Requirements by More Direct Power and Flow Dependent Thermal Limits

The replacement of the APRM scram and rod block trip setdown requirements by power and flow dependent thermal limits will continue to maintain the mechanical and thermal fuel design bases. Given that these design bases will be maintained, the proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

Proposed Change in the Methods Used To Evaluate Annulus Pressurization and Jet Loads Resulting From the Postulated Recirculation Suction Line Break

The proposed change to the methods of analysis does not change the design function or operation of any plant equipment. Therefore, the proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Proposed Change of APRM/RBM Setpoints

The minimum critical power ratio (MCPR) and maximum average planar linear heat generation rate (MAPLHGR) thermal limits will be developed to ensure that the fuel thermal and mechanical design bases shall be maintained. Operation in the expanded operating domain would not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. Given that the proposed change will continue to meet the current design basis, any reduction in a margin of safety would not be significant.

Proposed Replacement of APRM Scram and Rod Block Trip Setdown Requirements by More Direct Power and Flow Dependent Thermal Limits

Replacement of the APRM setpoint requirements with power- and flow-dependent adjustments to the MCPR and MAPLHGR or LHGR thermal limits will continue to ensure that margins to the fuel cladding safety limit are preserved during operation at other than rated conditions. The fuel cladding safety limit will continue to be bounding for any anticipated operational occurrence. The flow and power dependent adjustments will continue to ensure that all fuel thermal and mechanical design bases shall remain bounding. The 10 CFR 50.46 acceptance criteria for the performance of the emergency core cooling system following postulated loss-of-coolant accidents will continue to be met. Therefore, any reduction in a margin of safety would not be significant.

Proposed Change in the Methods Used To Evaluate Annulus Pressurization and Jet Loads Resulting From the Postulated Recirculation Suction Line Break

The proposed change in methods shows that the loads from a postulated recirculation suction line break would be bounded by the current design basis loads. Therefore, any reduction in a margin of safety would not be significant.

Based on this review, it appears that the three standards of 10 CFR 50.92") are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: July 8, 2004.

Description of amendment request: The proposed amendment would delete requirements from the Technical Specifications (TS) to maintain hydrogen and oxygen monitors. A notice of availability for this technical specification improvement using the consolidated line item improvement process (CLIIP) was published in the **Federal Register** on September 25, 2003 (68 FR 55416). Licensees were generally required to implement upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. The revised 10 CFR 50.44, "Standards for combustible gas control system in light-water-cooled power reactors," eliminated the requirements for hydrogen recombiners [not installed at Browns Ferry and, therefore, not addressed by this proposed amendment] and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated July 8, 2004. *Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen and oxygen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG [Regulatory Guide] 1.97 Category 1, is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen and oxygen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents. Also, as part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 2, as defined in RG 1.97, is an appropriate categorization for the oxygen monitors, because the monitors are required to verify the status of the inert containment.

The regulatory requirements for the hydrogen and oxygen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3 [classification of the oxygen monitors as Category 2], and removal of the hydrogen and oxygen monitors from TS will not prevent an accident management strategy through the use of the severe accident management guidelines (SAMGs), the emergency plan (EP), the emergency operating procedures (EOPs), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS; will not result in any failure mode not previously analyzed. The hydrogen and oxygen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen and oxygen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS; in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Category 2 oxygen monitors are adequate to verify the status of an inerted containment.

Therefore, this change does not involve a significant reduction in the margin of safety. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related oxygen monitors. Removal of hydrogen and oxygen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Acting Section Chief: Michael L. Marshall, Jr.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: July 30, 2004.

Brief description of amendment request: The proposed amendment would (1) add License Condition 2.C.(22) requiring an integrated tracer gas test of the control room envelope using methods described in American Society for Testing and Materials E741–00, "Standard Test Method for Determining Air Change in a Single Zone by Means of a Tracer Gas Dilution," and (2) delete Surveillance Requirement 3.7.3.6, which requires verification that unfiltered inleakage from control room emergency filtration system duct work outside the control room envelope is within limits.

Date of publication of individual notice in ***Federal Register:*** August 13, 2004 (68 FR 50217).

Expiration date of individual notice: October 12, 2004.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: December 23, 2003.

Brief description of amendment: The amendment clarified the requirements for inoperable core spray (CS) system components, rendered inoperable CS component verification requirements consistent with each other, and modified the location requirement of stored water during periods of CS system inoperability.

Date of Issuance: August 19, 2004.

Effective date: August 20, 2004, and shall be implemented within 60 days of issuance.

Amendment No.: 247.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: January 20, 2004 (69 FR 2738).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 19, 2004.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: February 4, 2004, as supplemented by letter dated June 9, 2004.

Brief description of amendment: This amendment revises Technical Specification (TS) Surveillance Requirement 4.4.1.3.2, "Reactor Coolant System Hot Shutdown Surveillance Requirements," and Limiting Condition for Operation 3.4.1.4.1.b, "Reactor Coolant System Cold Shutdown—Loops Filled Limiting Condition For Operation," by eliminating a requirement that the wide-range instrumentation be inoperable before the narrow-range instrumentation can be used for confirmation of the minimum steam generator secondary side water level. The amendment also revises the TS Index to restore consistency with other sections of the TS.

Date of issuance: August 16, 2004.

Effective date: August 16, 2004.

Amendment No.: 116.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register***: March 16, 2004 (69 FR 12365). The June 9, 2004, supplement provided clarifying information only and did not change the initial no proposed significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 2004.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois.

Date of application for amendments: June 27, 2003, as supplemented by letters dated January 29, 2004, March 3,

2004, June 4, 2004, and August 11, 2004.

Brief description of amendments: The amendments revise TS 3.4.10, "Pressurizer Safety Valves," by changing the existing pressurizer safety valve lift settings from "≥2460 psig and ≤2510 psig," to "≥2411 psig and ≤2509 psig."

Date of issuance: August 26, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 138/138, 131/131.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: September 30, 2003 (68 FR 56343).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 26, 2004.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 29, 2003, as supplemented by letters dated March 8 and June 8, 2004.

Brief description of amendment: The amendment revises the following: (1) Incorporates into the Updated Safety Analysis Report (USAR) the overall main steam isolation valve leakage pathway configuration (including the post-accident manual actions necessary to establish that configuration), (2) incorporates into the Cooper Nuclear Station licensing basis the loss-of-coolant accident (LOCA) dose calculation methodology (previously approved on an interim basis), and (3) deletes License Condition 2.C.(6), eliminating the commitment to provide potassium iodide to the control room personnel during LOCA conditions with core damage.

Date of issuance: September 1, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 206.

Facility Operating License No. DPR–46: Amendment revises the USAR and Operating License.

Date of initial notice in ***Federal Register***: March 2, 2004 (69 FR 9861).

The March 8 and June 8, 2004, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 2004.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–282, Prairie Island Nuclear Generating Plant, Unit 1, Goodhue County, Minnesota

Date of application for amendment: August 27, 2003, as supplemented December 16, 2003, March 22, 2004, and July 19, 2004.

Brief description of amendment: The amendment revises Technical Specification 5.5.14 to allow the licensee to perform post-modification testing of the containment pressure boundary following steam generator replacement in accordance with the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section XI, instead of 10 CFR Part 50, Appendix J, Option B. The steam generator replacement is scheduled for fall 2004.

Date of issuance: August 20, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 165.

Facility Operating License No. DPR–42: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register***: January 20, 2004 (69 FR 2744).

The March 22 and July 19, 2004, supplemental letters provided clarifying information that was within the scope of the original amendment request and did not change the Nuclear Regulatory Commission staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 20, 2004

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: July 23, 2003.

Brief description of amendment: Revised the near end-of-life Moderator Temperature Coefficient (MTC) Surveillance Requirement 4.1.1.3.b by placing a set of conditions on core operation, which if met, would allow exemption from the required MTC measurement. The conditional exemption is determined on a cycle-specific basis by considering the margin predicted to the surveillance requirement MTC limit and the performance of other core parameters, such as beginning of life MTC measurements and the critical boron concentration as a function of cycle life.

Date of issuance: July 21, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 169.

Renewed Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register***: September 30, 2003 (68 FR 56346).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 21, 2004.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 4, 2003, as supplemented by letter dated June 29, 2004.

Brief description of amendments: The amendments revise the South Texas Project, Units 1 and 2 Technical Specifications for the Remote Shutdown System to reflect requirements consistent with those in NUREG–1431, "Standard Technical Specifications—Westinghouse Plants." The changes increase the allowed outage time for inoperable Remote Shutdown System components to a time that is more consistent with their safety significance and relocate the description of the required components to the Bases where it will be directly controlled by the licensee.

Date of issuance: August 20, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 1–163; Unit 2–152.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: November 25, 2003 (68 FR 66140). The supplement dated June 29, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a

Safety Evaluation dated August 20, 2004.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket No. 50–338, North Anna Power Station, Unit 1, Louisa County, Virginia

Date of application for amendment: March 28, 2002, as supplemented by letters dated May 13, June 19, July 9, July 25, August 2, August 16, and November 15, 2002, May 6, May 9, May 27, June 11 (2 letters), July 18, August 20, August 26, September 4, September 5, September 22, September 26 (2 letters), November 10, December 8, and December 17, 2003, and January 6, January 22 (2 letters), February 12, February 13, March 1, June 16, and June 18 (2 letters), 2004. The November 15, 2002, submittal replaced the submittals dated July 9, July 25, and August 16, 2002.

Brief description of amendment: This amendment revises Improved Technical Specification Sections 2.1, 4.2, and 5.6.5 in order to allow Virginia Electric and Power Company to implement Framatome ANP Advanced Mark-BW fuel at North Anna Power Station, Unit 1.

Date of issuance: August 20, 2004.

Effective date: As of the date of issuance and shall be implemented prior to the initiation of core onload during Refueling Outage 17 (Fall 2004).

Amendment No.: 237.

Renewed Facility Operating License No. NPF–4: Amendment changes the Technical Specifications.

Date of initial notice in ***Federal Register***: July 22, 2003 (68 FR 43397). The supplements dated July 18, August 20, August 26, September 4, September 5, September 22, September 26 (2 letters), November 10, December 8, and December 17, 2003, and January 6, January 22 (2 letters), February 12, February 13, March 1, June 16, and June 18 (2 letters), 2004, contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 20, 2004.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to

issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

Florida Power and Light Company, Docket No. 251, Turkey Point Plant, Unit 4, Miami-Dade County, Florida

Date of amendment request: July 28, 2004, as supplemented in a letter dated August 5, 2004.

Description of amendment request: The amendment revised Technical Specifications 3/4.1.3.1, 3/4.1.3.2 and 3/4.1.3.5 to allow the use of an alternate method of determining rod position for the control rod F–8, until the end of Cycle 22 or until repairs can be conducted on the Analog Rod Indication System at the next outage of sufficient duration, whichever comes first.

Date of issuance: August 20, 2004.

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 221.

Facility Operating License No. (DPR–41): Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. August 5, 2004 (69 FR 47467). The licensee's August 5, 2004 submittal of supplemental information did not affect the original no significant hazards consideration determination, and did not expand the scope of the request as noticed on August 5, 2004. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by August 19, 2004, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated August 20, 2004.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Michael L. Marshall, Jr. (Acting).

Dated at Rockville, Maryland, this 3rd day of September 2004.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–20497 Filed 9–13–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50331; File No. PCAOB–2004–06]

Public Company Accounting Oversight Board; Order Approving Proposed Rule 3101, Certain Terms Used In Auditing and Related Professional Practice Standards and an Amendment to Rule 1001, Definitions of Terms Employed in Rules

September 8, 2004.

I. Introduction

On June 18, 2004, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") proposed Rule 3101, *Certain Terms Used in Auditing and Related Professional Practice Standards* ("Rule 3101"), and an amendment to paragraph (a)(xii) of Rule 1001, *Definitions of Terms Employed in Rules* ("Rule 1001(a)(xii)"), pursuant to the Sarbanes-Oxley Act of 2002 (the "Act")[1] and Section 19(b) of the Securities Exchange Act of 1934 (the "Exchange Act"). Rule 3101 sets forth the terminology the PCAOB will use to describe the degree of responsibility that the auditing and related professional practice standards impose on auditors that conduct engagements pursuant to the standards of the PCAOB and Rule 1001(a)(xii) defines the term "auditor" when applied to rules and standards adopted by the PCAOB. Notice of proposed Rule 3101 and Rule 1001(a)(xii) was published in the **Federal Register** on August 2, 2004,[2] and the Commission received five comment letters. For the reasons discussed below, the Commission is granting approval of Rule 3101 and Rule 1001(a)(xii).

II. Description

The Act establishes the PCAOB to oversee the audits of public companies and related matters, to protect investors, and to further the public interest in the preparation of informative, accurate and independent audit reports.[3] Section 103(a)(3) of the Act also states that the Board may adopt any statement of auditing or related professional practice standards developed by a professional group of accountants as interim or transitional standards, with the Board retaining full authority to modify, supplement, revise or subsequently amend, modify or repeal, in whole or in part, any such statements. Pursuant to this authority, the PCAOB adopted the auditing and related professional practice standards of the American Institute of Certified Public Accountants, as they existed on April 16, 2003, as interim or transitional standards (the "interim standards").[4]

The Board's proposed Rule 3101 sets forth the terminology the PCAOB will use to describe the degree of responsibility that the auditing and related professional practice standards impose on auditors that conduct engagements pursuant to the standards of the PCAOB. The accounting profession had not previously defined imperative terms, such as "should" or "must," used to describe different degrees of auditor responsibility when conducting engagements in accordance with professional standards. The PCAOB determined that defining the level of imperatives would assist auditors with their work by clarifying their responsibilities and thus would enhance the consistency of the work and the quality of the audits. In addition, clear definitions would aid the PCAOB in writing new standards in a uniform and understandable language. Thus, the PCAOB decided that it was important to clarify the meaning of these imperatives, since they are an integral part of every standard adopted or established by the PCAOB.

The general requirements of the proposed rule create three categories of imperatives, which impose different degrees of responsibility on the part of the auditor:

(1) *Unconditional Responsibility:* The words "must," "shall," and "is required" indicate unconditional responsibilities. The auditor must fulfill responsibilities of this type in all cases in which the circumstances exist to which the requirement applies.

(2) *Presumptively Mandatory Responsibility:* The word "should" indicates responsibilities that are presumptively mandatory. The auditor must comply with requirements of this type specified in the Board's standards unless the auditor demonstrates that alternative actions he or she followed in the circumstances were sufficient to achieve the objectives of the standard.

(3) *Responsibility To Consider:* The words "may," "might," "could," and other similar terms and phrases describe actions and procedures that auditors have a responsibility to consider. Matters described in this fashion require the auditor's attention and understanding. How and whether the auditor implements these matters in the audit will depend on the exercise of professional judgment in the circumstances consistent with the objectives of the standard.

Proposed Rule 1001(a)(xii) defines the term "auditor," which means both public accounting firms registered with the PCAOB and associated persons thereof.

III. Discussion

The Commission's comment period on the proposed rules ended on August 23, 2004, with the Commission receiving five comment letters. The comment letters came from four

[1] Sections 101, 103, and 107 of the Act.

[2] Release No. 34–50077 (July 26, 2004); 69 FR 46189 (August 2, 2004).

[3] Section 101(a) of the Act.

[4] The Commission approved the PCAOB's action in Release No. 34–47745, *Order Regarding Section 103(a)(3)(B) of the Sarbanes-Oxley Act of 2002,* (April 25, 2003).

registered public accounting firms and one professional association.

In general, commenters were supportive of the changes made by the PCAOB to its initially proposed rules. Two of the comment letters expressed general support and contained no suggestions. However, regarding Rule 3101, one commenter expressed concern about the requirement for auditors to document their decisions not to perform actions or procedures in the Board's standards that are presumptively mandatory. The commenter indicated that the lack of specificity in the proposed rule may prompt auditors to produce extensive and unnecessary documentation in circumstances where a procedure is not followed simply because it is not applicable. In its adopting release, the PCAOB concluded that for a presumptively mandatory responsibility, circumstances will be rare in which the auditor will perform an alternative procedure, thus, the documentation requirement ought not to result in unduly onerous consequences. The same commenter also was concerned that standard setters may be inclined to over use the terms "must," "shall," or "is required" in formulating new standards, which could ultimately be counterproductive and detrimental to audit quality, because the use of mandated procedures in inappropriate circumstances may provoke unthinking performance on the part of auditors. We note, however, that in proposing this rule, the PCAOB concluded that "must" appears infrequently in the interim standards, and that it expects unconditional responsibilities will be used sparingly in future PCAOB standards.

Two comment letters focused on the effective date. Proposed Rule 3101 provides that the documentation requirement for not performing a presumptively mandatory responsibility would apply to audits or other engagements performed for fiscal years ending (as opposed to "beginning") on or after the later of November 15, 2004 or 30 days after the date of approval of the final rule by the Commission. The commenters indicated that in many instances audit procedures are performed throughout the period of audit, and documentation to support these procedures is prepared contemporaneously with the audit, creating the potential need to update already created documentation. As previously noted, the PCAOB concluded that circumstances will be rare in which the auditor will perform an alternative procedure for a presumptively mandatory responsibility. Based on that conclusion, the frequency of such situations occurring during the transition period should be limited. The PCAOB also concluded that the documentation requirements in the proposed rule for a presumptively mandatory responsibility should coincide with the effective date for PCAOB Auditing Standard No. 3, *Audit Documentation*.

IV. Conclusion

On the basis of the foregoing, the Commission finds that proposed Rule 3101 and Rule 1001(a)(xii) are consistent with the requirements of the Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that proposed Rule 3101, *Certain Terms Used in Auditing and Related Professional Practice Standards*, and amendment to Rule 1001, *Definitions of Terms Employed in Rules* (File No. PCAOB–2004–06), be and hereby are approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2184 Filed 9–13–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50326; File No. SR–Amex–2004–51]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the American Stock Exchange LLC To Apply the Current Member Firm Guarantee in Equity Options to Index Options

September 7, 2004.

On June 30, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Commentary .02(d) to Amex Rule 950(d) to extend the Exchange's current member firm guarantee in facilitation cross transactions to index options. The proposed rule change was published for comment in the **Federal Register** on July 30, 2004.[3] The Commission received no comments on the proposal.

Pursuant to Commentary .02 to Amex Rule 950(d), a floor broker representing a member firm seeking to facilitate its own public customer's order is entitled to a participation guarantee of 20% if the order is traded at the best bid or offer ("BBO") provided by the trading crowd, or 40% if the order is traded at a price that improves the trading crowd's market, *i.e.*, at a price between the BBO.[4] These participation guarantees currently apply only to transactions in equity options. The Exchange proposes to amend Commentary .02(d) to provide the same participation guarantees for transactions in index options.[5]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[6] and, in particular, the requirements of Section 6(b)(5) of the Act.[7] The Commission believes that participation guarantees are reasonable and within the business judgment of the Exchange, as long as they do not restrict competition and do not harm investors. The Commission has found, with respect to participation guarantees in other contexts, that guarantees of as much as 40% of an order in options trading are not inconsistent with statutory standards of competition and free and open markets.[8]

The Commission notes that, pursuant to Commentary .02(d) to Amex Rule 950(d), if a facilitation trade takes place in a situation in which the specialist is entitled to a participation guarantee, the total number of contracts guaranteed to be allocated to the floor broker and the specialist in the aggregate shall not exceed 40% of the facilitation transaction.[9]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50081 (July 26, 2004), 69 FR 45856 (July 30, 2004) ("Notice").

[4] These guarantees apply only when the original order is equal to or larger than 400 contracts, or other eligible size as established by the Exchange, but in no case less than 50 contracts. *See* Commentary .02(d)(1)–(2) to Amex Rule 950(d).

[5] All other rules that apply to participation guarantees for transactions in equity options would also apply to transactions in index options. *See* Notice.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

[7] 15 U.S.C. 78f(b)(5)

[8] *See, e.g.*, Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) at 11398.

[9] *See* Commentary .02(d)(3) to Amex Rule 950(d). In such a situation, if the facilitation transaction occurs at the specialist's bid or offer, the specialist

Continued

It is therefore ordered, pursuant to section 19(b)(2) of the Act [10], that the proposed rule change (File No. SR–Amex–2004–51) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2180 Filed 9–13–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50322; File No. SR–BSE–2004–41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to Fees Applicable to Newly Listed Classes and New Market Maker Positions in Currently Listed Classes on the Boston Options Exchange Facility

September 7, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2004, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 2, 2004, the Exchange submitted Amendment No. 1 to the proposal.[3] The proposed rule change has been filed by the Exchange as establishing or changing a due, fee, or other charge under Section 19(b)(3)(A)(ii) of the Act [4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fee Schedule for the Boston Options Exchange [6] to allow the Exchange to take into account newly listed classes and new market maker positions in currently listed classes. Newly listed classes are classes not traded by BOX Market Makers on the date new market maker appointments are made in such classes; currently listed classes are classes traded by BOX Market Makers on the date new market maker appointments are made in such classes. The text of the proposed rule change appears below. Proposed new text is in *italics* and language to be deleted is in brackets.

BOSTON OPTIONS EXCHANGE FACILITY FEE SCHEDULE

* * * * *

Sec. 3 Market Maker Trading Fees

a. No change.

b. Minimum Activity Charge ("MAC")

* * * * *

1. MAC "Levels"

a. For Classes that have been trading *on any options exchange* for at least six calendar months

The table below provides the MAC for each of the six "categories" of options classes listed by BOX. The category for each class is determined by its total trading volume across all U.S. options exchanges as determined by OCC data. The classifications will be adjusted at least twice annually (in January and July, based on the average daily volume for the preceding six month period).

Class category	OCC average daily volume (# of contracts)	MAC per Market Maker per appointment per month
A	>100,000	$15,000
B	50,000 to 99,999	3,000
C	25,000 to 49,999	2,000
D	10,000 to 24,999	750
E	5,000 to 9,999	250
F	Less than 5,000	100

b. For Classes that have been trading for less than six calendar months

A class will not be placed into a MAC category [A MAC will not be applied] until a class has been trading *on any options exchange* for a full calendar month. After a class has been trading for a full calendar month, the MAC category for such class will be determined, applying the criteria set forth in the table above, based on the average daily volume for such full calendar month across all U.S. options exchanges as determined by OCC data. The classification will be adjusted at the beginning of each new calendar month thereafter based on the average daily trading volume for the previous calendar months in which the options class was traded for the entire month, until the class has been trading for six full calendar months. Thereafter, the classification will be adjusted at least twice annually (in January and July, based on the average daily volume for the preceding six month period) as set forth in subsection 1.a. above. Until an options class is placed in a MAC category, only per contract trade execution fees will apply to trades in that class.

2. MAC "Adjustments"

[The MAC will not be applied during the first three calendar months following launch.] *With respect to market makers appointed to classes traded by BOX Market Makers on the date of such appointment, if the market maker is not already a BOX Market Maker in at least one other class, the MAC will be applied the earlier of either*

shall be allocated the greater of either (1) 20% of the executed contracts if the facilitating floor broker has participated in 20% of the executed contracts or (2) a share of the executed contracts that have been divided equally among the specialist and other participants to the trade. In each case, the specialist's participation allocation shall only apply to the number of contracts remaining after all public customer orders and the floor broker's facilitation order have been satisfied. *See id.*

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Annah Y. Kim, Chief Regulatory Officer, Boston Options Exchange Regulation, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 1, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange revised the filing to clarify the text of the proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] *http://www.bostonoptions.com/pdf/FeeFilingSECofficial.pdf* (accessed Sept. 7, 2004).

(i) the date the Market Maker commences quoting the class, or (ii) three months after the date of such appointment. However, if the market maker is already a BOX Market Maker in at least one other class, the MAC will not be applied until the earlier of either (i) the date the Market Maker commences quoting the class, or (ii) the eleventh trading day after the date of such appointment.

With respect to market makers appointed to classes not traded by BOX Market Makers on the date of such appointment, if the market maker is not already a BOX Market Maker in at least one other class, the MAC will be applied the earlier of either (i) the date the Market Maker commences quoting the class, or (ii) three months after the date of such appointment. However, if the market maker is already a BOX Market Maker in at least one other class, the MAC will be applied the date the class is listed on BOX.

Any MAC that becomes applicable on a day other than the first trading day of a calendar month is applied on a pro rata basis based on the number of trading days in that month for which the class was traded on BOX.

Furthermore, the MAC will be "indexed to BOX's overall market share as determined by OCC clearing volumes. At the beginning of each calendar month, BOX will calculate its market share for the previous month (market share equals total BOX traded volume divided by the total OCC cleared volume for the classes that BOX has listed). If BOX's overall market share is less than 10%, BOX will reduce the MAC applicable for each Market Maker according to the following table.

BOX Market Share	MAC Applicable Rate
0% to 4.99%	33.3%
5% to 9.99%	66.7%
10% and more	full MAC

These adjustments are subject to subsection 1.b. above.

c. Volume discount on total volume traded across all assigned classes (calculated on monthly basis)

No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 purpose of the proposed rule change is to allow the Exchange to adjust the application of the minimum activity charge (the "MAC") for newly listed classes and new market maker positions in currently listed classes as follows:

With respect to market makers appointed to classes traded by BOX Market Makers on the date of such appointment, if the market maker is not already a BOX Market Maker in at least one other class, the MAC will be applied the earlier of either (i) the date the Market Maker commences quoting the class, or (ii) three months after the date of such appointment. However, if the market maker is already a BOX Market Maker in at least one other class, the MAC will not be applied until the earlier of either (i) the date the Market Maker commences quoting the class, or (ii) the eleventh trading day after the date of such appointment.

With respect to market makers appointed to classes not traded by BOX Market Makers on the date of such appointment, if the market maker is not already a BOX Market Maker in at least one other class, the MAC will be applied the earlier of either (i) the date the Market Maker commences quoting the class, or (ii) three months after the date of such appointment. However, if the market maker is already a BOX Market Maker in at least one other class, the MAC will be applied the date the class is listed on BOX.

Any MAC that becomes applicable on a day other than the first trading day of a calendar month is applied on a pro rata basis based on the number of trading days in that month for which the class was traded on BOX.

These adjustments are subject to Section 3.b.1.b of the Fee Schedule which provides that until an options class is placed in a MAC category, only per contract trade execution fees will apply to trades in that class.

The purpose of the proposed rule is also to clarify that a class will not be placed into a MAC category until such class has been trading on any options exchange for at least six calendar months.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members. The Exchange believes that it is appropriate to adjust the application of the MAC for certain newly created market maker positions in order to avoid applying a minimum trading fee before the market maker has commenced trading. However, with respect to newly listed classes, market makers who already have experience trading on BOX are expected to commence trading on the date the class is listed on BOX.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder[10] because it changes a due, fee, or other charge imposed by the Exchange. 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

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

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–BSE–2004–41 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–BSE–2004–41. 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 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–BSE–2004–41 and should be submitted on or before October 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2181 Filed 9–13–04; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50327; File No. SR–CBOE–2004–12]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Require Members To Use and Maintain a Back-up Autoquote System in Hybrid Classes

September 7, 2004.

On February 23, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt CBOE Rule 8.85(a)(xii) which would require CBOE members to use and maintain a back-up autoquote system in Hybrid classes. The proposed rule change was published for comment in the **Federal Register** on July 30, 2004.[3] The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] Specifically, the Commission finds that the proposed rule change is consistent with requirements of section 6(b)(6) of the Act.[5] The Commission believes that requiring CBOE members to use and maintain a back-up autoquote system in Hybrid classes is reasonable and that including this requirement in the Exchange's Minor Rule Violation Plan ("MRVP") will strengthen the ability of the Exchange to carry out its oversight and enforcement responsibilities as a self-regulatory organization.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with CBOE Rule 8.85(a)(xii) and all other rules subject to the imposition of fines under the Exchange's MRVP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the Exchange's MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that CBOE will continue to conduct surveillance with due diligence and make a determination based on its findings, whether fines of more or less than the recommended amount are appropriate for violations under the MRVP, on a case by case basis, or a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–CBOE–2004–12) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2182 Filed 9–13–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50055 (July 21, 2004), 69 FR 45860.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(6).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50328; File No. SR–MSRB–2004–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments To Eliminate Exemptions From the Continuing Education Regulatory Element Requirements

September 7, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 5, 2004, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the MSRB. On August 27, 2004, the MSRB filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Ronald W. Smith, Senior Legal Associate, MSRB, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 26, 2004. Amendment No. 1 replaced the original rule filing in its entirety.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing herewith a proposed rule change to amend Rule G–3 to eliminate all exemptions from the requirement to complete the Regulatory Element of the Continuing Education ("CE") Program. The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

Rule G–3. Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements

(a)–(g) No change.

(h) Continuing Education Requirements.

This section (h) prescribes requirements regarding the continuing education of certain registered persons subsequent to their *initial qualification and* registration with a registered securities association with respect to a person associated with a member of such association, or the appropriate regulatory agency as defined in section 3(a)(34) of the Act with respect to a person associated with any other broker, dealer or municipal securities dealer ("the appropriate enforcement authority"). The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

(i) Regulatory Element.

(A) Requirements—No broker, dealer, or municipal securities dealer shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the requirements of section (i) hereof.

[(1)] Each registered person shall complete the Regulatory Element [beginning with] *on* the occurrence of their second registration anniversary date and every three years thereafter or as otherwise prescribed by the Board. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, *also known as the "base date,"* shall establish the cycle of anniversary dates for purposes of this section (i). The content of the Regulatory Element shall be determined by the Board for each registration category of persons subject to the rule.

[(2) Persons who have been continuously registered for more than 10 years as of the effective date of this section are exempt from the requirements of this rule relative to participation in the Regulatory Element, provided such persons have not been subject to any disciplinary action within the last 10 years as enumerated in paragraphs (i)(C)(1)–(2) of this section. However, persons delegated supervisory responsibility or authority pursuant to rule G–27 and registered in such supervisory capacity are exempt from participation in the Regulatory Element under this provision only if they have been continuously registered in a supervisory capacity for more than ten years as of the effective date of this rule and provided that such supervisory person has not been subject to any disciplinary action under paragraphs (i)(C)(1)–(2) of this section.]

[(3) In the event that a registered person who is exempt from participation in the Regulatory Element subsequently becomes the subject of a disciplinary action as enumerated in paragraphs (i)(C)(1)–(2), such person shall be required to satisfy the requirements of the Regulatory Element as if the date the disciplinary action becomes final is the person's initial registration anniversary date.]

(B) No change.

(C) [Re-entry into Program] *Disciplinary Actions*—Unless otherwise determined by the appropriate enforcement authority, a registered person will be required to [re-enter] *retake* the Regulatory Element and satisfy all of its requirements in the event such person:

(1) Becomes subject to any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934;

(2) Becomes subject to suspension or to the imposition of a fine of $5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, the appropriate enforcement authority or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; *or*

(3) Is ordered as a sanction in a disciplinary action to [re-enter] *retake* the [continuing education program] *Regulatory Element* by any securities governmental agency, the appropriate enforcement authority or securities self-regulatory organization.

[Re-entry] *The retaking of the Regulatory Element* shall commence with [initial] participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of (1) above, or the completion of the sanction or the disciplinary action becomes final, in the case of (2) or (3) above. The date that the disciplinary action becomes final will be deemed the person's [initial registration anniversary] *new base* date for purposes of this section (i).

(D)–(G) No change.

(ii) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change, as amended, 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. MSRB 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 G–3(h), on CE requirements, specifies the CE requirements for registered persons subsequent to their initial qualification and registration. The requirements consist of a Regulatory Element and a Firm Element.[4] The Regulatory Element is a computer-based education program administered by NASD to help ensure that registered persons are kept up-to-date on regulatory, compliance, and sales practice matters in the industry.[5] Unless exempt, each registered person is required to complete the Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration

[4] The Firm Element of the CE Program applies to any person registered with an MSRB registered firm who has direct contact with customers in the conduct of the dealer's municipal securities sales, trading and investment banking activities and to the immediate supervisors of such persons (collectively called "covered registered persons"). The requirement stipulates that each firm must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skill and professionalism. Each firm is required annually to conduct a training needs analysis, develop a written training plan, and implement the plan.

[5] Rule G–3(h)(i)(G) permits a dealer to deliver the Regulatory Element to registered persons on firm premises ("In-Firm Delivery") as an option to having persons take the training at a designated center provided that firms comply with specific requirements relating to supervision, delivery site(s), technology, administration, and proctoring. In addition, Rule G–3(h)(i)(G)(5)(c) requires that persons serving as proctors for the purposes of In-Firm Delivery must be registered.

anniversary date.[6] There are three Regulatory Element programs: the S201 Supervisor Program for registered principals and supervisors; the S106 Series 6 Program for Series 6 representatives; and the S101 General Program for Series 7 and all other registrations. Approximately 135,000 registered persons currently are exempt from the Regulatory Element. These include registered persons who, when the CE Program was adopted in 1995, had been registered for at least ten years and who did not have a significant disciplinary action[7] in their CRD record for the previous ten years ("grandfathered" persons). These also include those persons who had "graduated" from the Regulatory Element by satisfying their tenth anniversary requirement before July 1998, when Rule G–3(h) was amended and the graduation provision eliminated, and who did not have a significant disciplinary action in their CRD records for the previous ten years.[8]

At its December 2003 meeting, the Securities Industry/Regulatory Council on Continuing Education ("Council")[9] discussed the current exemptions from the Regulatory Element and agreed unanimously to recommend that the SROs repeal the exemptions and require all registered persons to participate in the Regulatory Element. In reaching this conclusion, the Council was of the view that there is great value in exposing all industry participants to the benefits of the Regulatory Element, in part because of the significant regulatory issues that have emerged over the past few years. The Regulatory Element programs include teaching and training content that is continuously updated to address current regulatory concerns as well as new products and trading strategies. Exempt persons currently do not have the benefit of this material.

In addition, the Council will introduce a new content module to the Regulatory Element programs that will specifically address ethics and will require participants to recognize ethical issues in given situations. Participants will be required to make decisions in the context of, for example, peer pressure, the temptation to rationalize, or a lack of clear-cut guidance from existing rules or regulations. The Council strongly believes that all registered persons, regardless of their years of experience in the industry, should have the benefit of this training.

Consistent with the Council's recommendation, the proposed rule change eliminates the current Regulatory Element exemptions. The other SRO members of the Council also support eliminating the exemptions and are pursuing amendments to their respective rules.

The effective date of the MSRB proposed rule change is dependent upon the effective date of a similar proposed rule change filed by NASD[10] because NASD administers the Regulatory Element computer-based education program. NASD has stated that it will announce the effective date of its proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. NASD stated that the effective date will be (1) not more than 30 days following publication of the Notice to Members announcing Commission approval, (2) not more than 30 days following the implementation of necessary changes to Web Central Registration Depository (Web CRD), or (3) April 4, 2005, whichever date is the latest to occur. The effective date of the MSRB proposed rule change will be the same as the effective date of the NASD's proposed rule change.

Following the effective date of the proposed rule change, implementation will be based on the application of the existing requirements of the Regulatory Element (Rule G–3(h)(i)(A)) to all registered persons. The way in which CRD applies these requirements is as follows. CRD establishes a "base date" for each registered person and calculates anniversaries from that date. Usually, the base date is the date of the person's initial securities registration. However, the base date may be revised to be the effective date of a significant disciplinary action in accordance with Rule G–3(h)(i)(C) or the date on which a formerly registered person re-qualifies for association with an NASD member by qualification exam. Using the base date, CRD creates a Regulatory Element requirement on the second anniversary of the base date and then every three years thereafter. Beginning on or after the effective date of the proposed rule change, registered persons formerly exempt from the Regulatory Element requirement must satisfy such requirement on the occurrence of a Regulatory Element base date anniversary (*i.e.*, the second anniversary of the base date and every three years thereafter).[11]

NASD staff has reviewed a projection of how the anniversaries of the formerly exempt registered persons (about 135,000 persons) will occur using the base dates that CRD maintains for these persons. The projection shows that within three years from the proposed amendments' effective date, all formerly exempt registered persons will have been brought into the Regulatory Element program. Furthermore, anniversaries will occur at a more-or-less steady rate so that there would be no extraordinary stress placed upon the capacity of the existing test/training facilities during the next three years or thereafter.

In addition, the proposed rule amendment would replace references in Rule G–3(h)(i)(C) to "re-entry" into the Regulatory Element with a requirement to "retake" the Regulatory Element to clarify that the significant disciplinary action provisions apply to all registered persons and not only to currently exempt persons.

1. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which authorizes the MSRB to adopt rules that shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote

[6] This is the current Regulatory Element schedule, as amended in 1998.

[7] For purposes of Rule G–3(h), a significant disciplinary action generally means a statutory disqualification, a suspension or imposition of a fine of $5,000 or more, or being subject to an order from a securities regulator to re-enter the Regulatory Element. *See* Rule G–3(h)(i)(C).

[8] When Rule G–3(h) was first adopted in 1995, the Regulatory Element schedule required registered persons to satisfy the Regulatory Element on the second, fifth and tenth anniversary of their initial securities registration. After satisfying the tenth anniversary requirement, a person was "graduated" from the Regulatory Element. A graduated principal re-entered the Regulatory Element if he or she incurred a significant disciplinary action. A graduated person who was not a principal re-entered if he or she acquired a principal registration or incurred a significant disciplinary action.

[9] As of the date of this rule filing, the Council consists of 17 individuals, six representing self-regulatory organizations ("SROs") (American Stock Exchange LLC, Chicago Board Options Exchange, Inc., MSRB, NASD, New York Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc.,) and 11 representing the industry. The Council was organized in 1995 to facilitate cooperative industry/regulatory coordination of the CE Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping to develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element, developing and updating information about the program for industry-wide dissemination, and maintaining the program on a revenue-neutral basis while assuring adequate financial reserves.

[10] *See* Securities Exchange Act Release No. 50204 (August 16, 2004), 69 FR 51873 (August 23, 2004) (SR–NASD–2004–098).

[11] Bank dealers do not have access to CRD. Each bank dealer must track the base date of each of its employees and schedule appointments for those employees to complete the Regulatory Element when required. When developing its plan to bring formerly exempt registered persons into the CRD system, NASD believed that the number of employees of non-NASD member firms who would be affected would not impact the delivery plan significantly.

just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act by ensuring that all registered persons are kept up-to-date on industry rules, regulations and practices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change, as amended, 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

The MSRB has neither solicited nor received 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 self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. 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–MSRB–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-MSRB–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 Room. Copies of the filing also will be available for inspection and copying at the principal offices of the MSRB. 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-MSRB–2004–04 and should be submitted on or before October 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2177 Filed 9–13–04; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50325; File No. SR–NASD–2004–102]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish a Fee for Company Profile Reports of OTCBB Issuers

September 7, 2004.

On July 1, 2004, the National Association of Securities Dealers, Inc. ("NASD") through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a fee of $26 for third-party research reports, Company Profile Reports, to the fee schedule for OTC Bulletin Board ("OTCBB") historical trading activity reports. The proposed reports, which are produced, maintained, and owned by a third-party vendor, would be made available through the OTCBB Web site ("OTCBB.com").[3] The **Federal Register** published the proposed rule change for comment on July 27, 2004.[4] The Commission received no comments on the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.[5] In particular, the Commission believes that the proposed rule change is consistent with section 15A(b)(5) of the Act,[6] which requires, among other things, that the rules of the NASD provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The Commission believes that the proposed rule change establishes a reasonable fee for OTCBB.com users that seek third-party research reports of OTCBB issuers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NASD–2004–102) be, and it hereby is, approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq represented that the current third-party vendor for the Company Profile Reports is Knobias, LLC ("Knobias"). Knobias receives much of its historical trading data from Tradeline, Inc. ("Tradeline"). Tradeline subscribes to a number of Nasdaq data feed services. Telephone conversation among Eric Lai, Office of General Counsel, Nasdaq; Tim Fox, Attorney, Division of Market Regulation ("Division"), Commission; and Ross Hurwitz, Summer Honors Intern, Division, Commission on July 14, 2004.

[4] Securities Exchange Act Release No. 50037 (July 19, 2004), 69 FR 44700.

[5] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3(b)(5).

[7] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2178 Filed 9–13–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50312; File No. SR–PCX–2004–71]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Regarding Rules Relating to Examinations for Floor Brokers and Market Makers and Waiver of the Examinations

September 3, 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 July 19, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 13, 2004, PCX filed Amendment No. 1 to the proposed rule change.[3] On August 19, 2004, PCX filed Amendment No. 2 to the proposed rule change.[4] Pursuant to section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(3) thereunder,[6] PCX has designated this proposal as one concerned solely with the administration of the self-regulatory organization, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX proposes to amend and move the provisions of PCX Rule 1.7, relating to PCX-administered examinations for floor brokers and market makers and the rules permitting a waiver of the examinations, to current PCX Rule 2.5. The text of the proposed rule change is available at the Exchange and the Commission, and may be viewed on the Commission's Web site, at *http://www.sec.gov/rules/sro.shtml*.

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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PCX proposes to amend PCX Rule 1.7 to make administrative changes necessary as a result of the Exchange's change to a demutualized structure.[7] Recently-approved changes to PCX Rule 1.7, relating to PCX-administered examinations for floor brokers and market makers and the rules permitting a waiver of the examinations, were filed by the Exchange prior to approval of the demutualized structure by the Commission.[8] The approval order for the changes to PCX Rule 1.7, however, was issued by the Commission after the demutualized structure was approved. The approval of the demutualized PCX rules caused some of the Exchange's rules, including former PCX Rule 1.7, to be renumbered, and eliminated references to a Membership Committee. As a result of these changes, the changes approved in PCX Rule 1.7 must be modified and moved to current PCX Rule 2.5 to conform to the approved demutualized PCX Rules. The proposed rule change amends the PCX rules accordingly.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[9] in general, and further the objectives of section 6(b)(5) of the Act,[10] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(3) thereunder[12] in that it is concerned solely with the administration of the self-regulatory organization. At any time within 60 days of the filing of this 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.[13]

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

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Steven B. Matlin, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 12, 2004 ("Amendment No. 1"). Amendment No. 1 superseded and replaced the original proposal in its entirety.

[4] *See* Letter from Steven B. Matlin, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 18, 2004 ("Amendment No. 2"). Amendment No. 2 made a technical correction to the proposed rule text.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(3).

[7] *See* Securities Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (approving File No. SR–PCX–2004–08).

[8] *See* Securities Exchange Release No. 49922 (June 28, 2004), 69 FR 40701 (July 6, 2004) (approving File No. File No. SR–PCX–2003–51).

[9] 15 U.S.C. 78f(b).

[10] 10 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(3).

[13] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on August 19, 2004, the date PCX submitted Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

• Send an e-mail to *rule-comments@sec.gov.*

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–PCX–2004–71. 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 PCX. 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–PCX–2004–71 and should be submitted on or before October 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2183 Filed 9–13–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3620]

State of Florida

As a result of the President's major disaster declaration on September 4, 2004, and a notice received from the Department of Homeland Security—Federal Emergency Management Agency—on September 5, 2004, I find that Brevard, Broward, Citrus, Glades, Hernando, Highlands, Indian River, Lake, Martin, Miami-Dade, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Polk, St. Lucie and Sumter Counties in the State of Florida constitute a disaster area due to damages caused by Hurricane Frances occurring on September 3, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 3, 2004 and for economic injury until the close of business on June 6, 2005 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in Florida may be filed until the specified date at the above location: Charlotte, Collier, DeSoto, Hardee, Hendry, Hillsborough, Lee, Levy, Manatee, Marion, Monroe, Pinellas, Seminole, and Volusia in Florida.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.375
Homeowners without credit available elsewhere	3.187
Businesses with credit available elsewhere	5.800
Businesses and Non-Profit Organizations without credit available elsewhere	2.900
Others (Including Non-Profit Organizations) with credit available elsewhere	4.875
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without credit available elsewhere	2.900

The number assigned to this disaster for physical damage is 362008 and for economic injury the number is 9ZU100 for Florida.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 7, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–20632 Filed 9–13–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3620]

State of Florida; Amendment #1

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 7, 2004, the above numbered declaration is hereby amended to include Alachua, Clay, Duval, Flagler, Hendry, Putnam, Seminole, St. Johns, and Volusia counties as disaster areas due to damages caused by Hurricane Frances occurring on September 3, 2004, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Baker, Bradford, Columbia, Gilchrist, Nassau, and Union in the State of Florida may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have previously been declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 3, 2004 and for economic injury the deadline is June 6, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 8, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–20667 Filed 9–13–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster #3618; Commonwealth of the Northern Mariana Islands; Amendment #1

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency— effective August 26, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning August 21, 2004 and continuing through August 26, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is October 26, 2004 and for economic injury the deadline is May 27, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

[14] 17 CFR 200.30–3(a)(12).

Dated: September 3, 2004.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–20634 Filed 9–13–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3619]

Commonwealth of Virginia

As a result of the President's major disaster declaration on September 3, 2004, I find that the independent cities of Colonial Heights, Hopewell, Petersburg, and Richmond, and the counties of Chesterfield, Dinwiddie, Hanover, Henrico, and Prince George Counties in the Commonwealth of Virginia constitute a disaster area due to damages caused by severe storms, flooding and tornadoes associated with Tropical Depression Gaston occurring on August 30, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 2, 2004 and for economic injury until the close of business on June 3, 2005 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Amelia, Brunswick, Caroline, Charles City, Goochland, Greensville, King William, Louisa, New Kent, Nottoway, Powhatan, Spotsylvania, Surry and Sussex in Virginia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.375
Homeowners without credit available elsewhere	3.187
Businesses with credit available elsewhere	5.800
Businesses and non-profit organizations without credit available elsewhere	2.900
Others (including non-profit organizations) with credit available elsewhere	4.875
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.900

The number assigned to this disaster for physical damage is 361906 and for economic injury the number is 9ZT900 for Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 7, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–20633 Filed 9–13–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3608; Amendment #2]

State of West Virginia

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 1, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning July 22, 2004, and continuing through September 1, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is October 5, 2004, and for economic injury the deadline is May 6, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 8, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–20665 Filed 9–13–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region VI—Houston District Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI, Houston District Advisory Council, located in the geographical area of Houston, Texas, will be hosting a public meeting on Wednesday, September 22, 2004, at 1 p.m. The meeting will be held at the U.S. Small Business Administration, Houston District Office, 8701 South Gessner Drive, Suite 1200, Conference Room, Houston, TX 77074, to discuss such business as may be presented by members of the District Advisory Council, the staff of the U.S. Small Business Administration, and others attending. If you have any questions or concerns regarding this meeting, please write or contact Milton Wilson, Jr., District Director, U.S. Small Business Administration, 8701 South Gessner Drive, Suite 1200, (713) 773–6500 telephone, (713) 773–6550 fax.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 04–20666 Filed 9–13–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–75]

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 October 4, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA–2004–18798 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: Mr. Pete Rouse (816–329–4135), Small Airplane Directorate (ACE–111), Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; 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 September 7, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2004–18798.
Petitioner: Northwest Turbines, LLC.
Sections of 14 CFR Affected: 14 CFR 23.973(f).
Description of Relief Sought: To allow Northwest Turbines, LLC to install Pratt and Whitney PT6 engines and hardware on Beech Model B60 airplanes, which would require an exemption from 23.973(f), minimum diameter for fuel tank filler openings on turbine engine airplanes.

[FR Doc. 04–20621 Filed 9–13–04; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Barkley Regional Airport, Paducah, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Barkley Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 14, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2862 Business Park Dr., Bldg. G, Memphis, Tennessee 38118–1555.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard Roof, Manager of the Barkley Regional Airport at the following address: P.O. Box 1131, Paducah, KY 42002.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Barkley Regional Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Michael Thompson, Program Manager, Memphis Airports District Office, 2862 Business Park, Bldg. G, Memphis, TN 38118, 901–322–8188. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Barkley Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 7, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Barkley Regional Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than 120 days after receipt of application supplement.

The following is a brief overview of the application.

PFC Application No.: 04–02–C–00–PAH.
Level of the proposed PFC: $3.00.
Proposed charge effective date: January 1, 2005.
Proposed charge expiration date: March 1, 2014.
Total estimated net PFC revenue: $875,189.

Brief Description of Proposed Project(s)

5% AIP Local Share for:
Master Plan
Runway 14/32 Rehabilitation and Extension
Airfield Taxiway Rehabilitation and Construction
Airport Rescue Fire Fighting Equipment Improvements
Aircraft Apron Rehabilitation and Expansion
Security Fence Improvements
Airfield Lighting Improvements
Perimeter Road Construction
Airport Terminal Improvements
Fisher and Tower Road relocation
Security Vehicle Acquisition
Airfield Signage Improvements

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 On-demand.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Barkley Regional Airport.

Issued in Memphis, TN, on September 7, 2004.

Charles L. Harris,

Assistant Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 04–20623 Filed 9–13–04; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–06–C–00–EAT To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pangborn Memorial Airport, Submitted by the Ports of Chelan and Douglas Counties, Pangborn Memorial Airport, Wenatchee, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Pangborn Memorial Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before October 14, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Patricia A. Moore, Airport Manager, at the following address: One Pangborn Drive; East Wenatchee, WA 98802–9233.

Domestic and foreign air carriers may submit copies of written comments previously provided to Pangborn Memorial Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 04–06–C–00–EAT to impose and use PFC revenue at Pangborn Memorial Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 7, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Ports of Chelan and Douglas Counties, Pangborn Memorial Airport, Wenatchee, Washington, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 8, 2004.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: February 1, 2005.

Proposed charge expiration date: September 1, 2007.

Total requested for use approval: $356,000.

Brief description of proposed projects: Acquire Feil-Vickery Property; Phase II Perimeter Fencing and Gates.

Class or classes of air carrier, which the public agency has requested, not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Pangborn Memorial Airport.

Issued in Renton, Washington on September 7, 2004.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 04–20624 Filed 9–13–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–18892]

Notice of Request To Renew Approval of an Information Collection: OMB No. 2126–0015 (Designation of Agents, Motor Carriers, Brokers and Freight Forwarders)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice announces that FMCSA intends to submit a request to the Office of Management and Budget (OMB) for renewed approval of the information collection described below. This information collection allows registered motor carriers, property brokers, and freight forwarders a means of meeting process agent requirements. This notice is required by the Paperwork Reduction Act.

DATES: Your comments must be submitted by November 15, 2004.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. Be sure to include the docket number appearing in the heading of this document on your comment. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you would like to be notified when your comment is received, you must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Lee, (202) 385–2411, Commercial Enforcement (MC–ECC), Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Designation of Agents, Motor Carriers, Brokers and Freight Forwarders.

OMB Approval Number: 2126–0015.

Background: The Secretary of Transportation (Secretary) is authorized to register for-hire motor carriers of regulated commodities under the provisions of 49 U.S.C. 13902; freight forwarders under the provisions of 49 U.S.C. 13903, and property brokers under the provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered pursuant to 49 U.S.C. 13901. The Secretary has delegated authority pertaining to these registration requirements to the FMCSA.

Registered motor carriers (including private carriers) and freight forwarders must designate: (1) An agent on whom service of notices in proceedings before the Secretary may be made (49 U.S.C. 13303); and (2) for every State in which they operate and traverse in the United States during such operations, agents on whom process issued by a court may be served in actions brought against the registered transportation entity (49 U.S.C. 13304). Every broker shall make a designation for each State in which its offices are located or in which contracts are written. Regulations governing the designation of process agents are found at 49 CFR part 366. This designation is filed with the FMCSA on Form BOC–3, "Designation of Agent for Service of Process."

Respondents: Motor carriers, freight forwarders and brokers.

Estimated Burden: The estimated average burden per response for Form BOC–3 is 10 minutes. The estimated total annual burden is 5,000 hours for Form BOC–3 based on 30,000 filings per year (30,000 filings × 10 minutes/60 minutes = 5,000 hours).

Frequency: Form BOC–3 must be filed by all motor carriers (including private carriers) and freight forwarders when the transportation entity first registers with the FMCSA. All brokers shall file Form BOC–3 as necessary, and make a designation for each State in which it has an office or in which contracts are written. Subsequent filings are made only if the motor carrier, broker or freight forwarder changes process agents.

Public Comments Invited: We invite you to comment on any aspect of this information collection, including, but not limited to: (1) Whether the collection of information is necessary for the proper performance of the

functions of the FMCSA, including whether the information is practical and useful; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

Electronic Access and Filing: You may submit or retrieve comments online through the Docket Management System (DMS) at *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII) (TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8).

The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. You may also download an electronic copy of this document from the DOT Docket Management System on the Internet at *http://dms.dot.gov/search.htm.* Please include the docket number appearing in the heading of this document.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 U.S.C. 13303, 13304, 13901, 13902, 13903 and 13904; and 49 CFR 1.73 and 366.

Issued on: August 31, 2004.

Annette M. Sandberg,

Administrator.

[FR Doc. 04–20625 Filed 9–13–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–18973; Notice 1]

Michelin North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Michelin North America, Inc. (Michelin) has determined that the sidewall markings on certain tires that it manufactured in 1993 through 2004 do not comply with S6.5(d) of 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New pneumatic tires for vehicles other than passenger cars." Michelin has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Michelin's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

A total of approximately 97,468 tires are affected. This includes approximately 68,950 Michelin tires consisting of 24,644 LT215/85R16 XPS Rib; 35,934 LT225/75R16 XPS Rib; 5,348 LT215/85R16 XPS Traction; and 3,024 8.75R16.5 XPS Rib tires manufactured from May 1, 2003 through the week beginning July 12, 2004. It also includes 28,518 Michelin 8.75R16.5 XPS Rib tires manufactured from approximately mid-1993 through the week beginning July 12, 2004. The sidewall load and inflation markings of these two groups of tires do not comply with S6.5(d), "Tire markings." S6.5(d) requires that each tire shall be marked on each sidewall with "[t]he maximum load rating and corresponding inflation pressure of the tire" in both metric and English units.

The sidewall load and inflation markings on the 68,950 tires manufactured from May 1, 2003 through the week beginning July 12, 2004 are in English units only and do not have the metric units required by S6.5(d). The sidewall load and inflation markings on the 28,518 tires manufactured from approximately mid-1993 through the week beginning July 12, 2004 are incorrect for the Max. Load Dual category; the tires are marked "2550 lbs at 75 psi" when they should be marked "2405 lbs at 80 psi."

Michelin believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. With regard to the tires that are marked in English units only, Michelin states that the tires are manufactured for sale in the U.S. replacement market where the English system is universally comprehended, and the maximum load expressed in "lbs." and air pressure expressed in "psi" will not confuse U.S. vehicle owners, nor result in unsafe use of the tires in terms of load or inflation values. With regard to the tires that are marked with the incorrect Max. Load Dual load and inflation, Michelin asserts that

"[w]hen both single and dual loads are marked on the tire (as is the case here), FMVSS No. 119 requires that performance compliance testing be done based on the single (higher, more punishing) tire load. Accordingly, the incorrect dual load marking is inconsequential for this tire * * * Even at the lower, more punishing pressure of 75 psi, the tire meets all FMVSS No. 119 minimum performance requirements."

Michelin states that these tires meet or exceed all of the performance requirements of FMVSS No. 119.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 14, 2004.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: September 8, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–20626 Filed 9–13–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–18972; Notice 1]

Michelin North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Michelin North America, Inc. (Michelin) has determined that the sidewall markings on certain tires that it manufactured in 2000 through 2003 do not comply with S4.2.1(c) of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New pneumatic tires." Michelin has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Michelin's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

A total of approximately 60,729 Michelin Symmetry P195/60R15 87S tires manufactured during 8/29/00 to 10/19/03 and approximately 12,633 Michelin Symmetry P205/60R15 90S tires manufacturing during 8/6/00 to 9/22/00 and 7/27/03 to 8/23/03 are affected. S4.2.1 of FMVSS No. 109 requires that each tire shall conform to the requirement that "(c) Its load rating shall be that specified in * * * one of the publications described in S4.4.1(b)."

The sidewall markings on the affected tires do not comply with S4.2.1(c) because the sidewall markings understate the actual carrying capacity of the tires. The Max Load value indicated is less than the actual load carry capability of the tires at the marked air pressure value of 240 kPa (35 psi). The P195/60R15 tires are incorrectly marked MAX LOAD 470 kg (1036 Lbs) and should have been marked Max Load 540 kg (1190 Lbs). The P205/60R15 tires are incorrectly marked MAX LOAD 510 kg (1124 Lbs) and should have been marked Max Load 590 kg (1301 Lbs).

Michelin believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Michelin states that at the indicated maximum pressure value of 35 psi the P195/60R15 tire will carry an extra 151 pounds per tire and the P205/60R15 tire will carry an additional 177 pounds per tire, thus consumers relying upon the carrying capacity values marked on the tires will put less load on the tires than they are capable of carrying. Michelin further states that all of the performance requirements of FMVSS No. 109 are met or exceeded, and the tires are marked with the correct maximum pressure value of 35 psi. Michelin says:

> The agency has previously concluded that this type of marking noncompliance does not have a negative impact on motor vehicle safety. In its granting of inconsequential status to a petition for a similar understated load capacity marking noncompliance, *See, e.g.*, 66 FR 222 (November 16, 2001), the agency determined that, if consumers were to rely upon such a labeling, they would put less load on the tire than it is capable of carrying, thus presenting no safety concern.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 14, 2004.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: September 8, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–20627 Filed 9–13–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–251520–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulation, REG–251520–96 (TD 8785), Classification of Certain Transactions Involving Computer Programs Redeterminations (Sections 1.861–18 and 1.861–18(k)).

DATES: Written comments should be received on or before November 15, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Paul Finger, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Classification of Certain Transactions Involving Computer Programs.

OMB Number: 1545–1594.

Regulation Project Number: REG–251520–96.

Abstract: The information requested in regulation Section 1.861–18(k) is necessary for the Commissioner to determine whether a taxpayer is properly requesting to change its method of accounting. This regulation

provides rules for classifying transactions in computer programs. This regulation grants the taxpayer consent to change its method of accounting for transactions involving computer programs so that the taxpayer can conform with the classifications prescribed in the regulations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1.

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: September 3, 2004.

Paul Finger,

IRS Reports Clearance Officer.

[FR Doc. 04–20618 Filed 9–13–04; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: C. Richard D'Amato, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, evaluate and report to Congress annually on "the national security implications of the bilateral trade and economic relationship between the United States and the People's Republic of China." Pursuant to this mandate, the Commission will be holding a public hearing in Akron, Ohio on September 23, 2004. The purpose of this hearing is to examine the impact of U.S.-China trade and investment on key manufacturing sectors. The Commission will receive testimony from labor and industry representatives, researchers and analysts of the auto and auto parts, rubber, glassware and ceramics, steel, machining tools, and other important regional manufacturing sectors on: (1) How they have been affected by economic relations with China, and (2) how this may be indicative of broader trends for the U.S. manufacturing base. The Commission will also hear from community representatives on the economic development and other local effects on the region's trade and investment relations with China.

Background

This event is part of a series of field hearings the Commission is holding to collect input from local industry and labor leaders, government officials, researchers, other informed witnesses and the public on the impact of U.S.-China trade and economic relations. The Commission will hold two field hearings this fall in Akron, Ohio (September 23) and Seattle, Washington (October 14) on various aspects of the U.S.-China trade and economic relationship. Information on upcoming field hearings, as well as transcripts of past Commission hearings, can be obtained from the USCC Web site at *http://www.uscc.gov.*

The Akron, Ohio hearing will be Co-chaired by Professor June Teufel Dreyer of The University of Miami and Michael Wessel, Senior Vice President of the Downey McGrath Group.

Purpose of Hearing

The hearing is designed to assist the Commission in fulfilling its mandate by exploring how U.S.-China trade and investment is impacting vital sectors of the U.S. economy. The Commission seeks to gain a better understanding of how Ohio and regional manufacturing industries have been impacted by U.S.-China economic relations. The Commission will also investigate how this is indicative of broader trends for the U.S. manufacturing base and the implications for U.S. economic and national security.

Invited witnesses include representatives of industry and labor, and researchers and analysts of the auto and auto parts, rubber, glassware and ceramics, steel, machining tools, and other important regional manufacturing sectors.

Copies of the hearing agenda will be made available on the Commission's Web site at *http://www.uscc.gov.* The hearing will be held in two sessions, one in the morning and one in the afternoon, where Commissioners will take testimony from invited witnesses. There will be a question and answer period between the Commissioners and the witnesses. Public participation is invited during the open-microphone session for public comment at the conclusion of the afternoon session. Sign-up for the open-microphone session will take place in the morning beginning at 8:30 a.m. and will be on a first come, first served basis. Each individual or group making an oral presentation will be limited to a total time of 3 minutes. Because of time constraints, parties with common interests are encouraged to designate a single speaker to represent their views.

DATES: Thursday, September 23, 2004, 9 a.m. to 6 p.m. eastern standard time inclusive. (Open microphone session will be from 5 to 6 p.m.) A detailed agenda for the hearing will be posted to the Commission's Web site at *http://www.uscc.gov* in the near future.

ADDRESSES: The hearing will be held at the Akron City Council offices, room 301, Municipal Building, 166 South High Street, Akron, Ohio 44308. Parking is available at the CitiCenter and Summit County parking decks adjacent to the Municipal Building. Public seating is limited to about 70 people on a first come, first served basis.

Security Requirements: Everyone entering the Municipal Building is required to have a picture ID.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate

Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; phone 202–624–1409, or via e-mail at *kmichels@uscc.gov*.

Authority: The Commission was established in October 2000 pursuant to the Floyd D. Spence National Defense Authorization Act section 1238, Pub. L. 106–398, 114 Stat. 1654A–334 (2000) (codified at 22 U.S.C. 7002 (2001), as amended, and the "Consolidated Appropriations Resolution of 2003," Pub. L. 108–7 dated February 20, 2003)

Dated: September 8, 2004.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 04–20659 Filed 9–13–04; 8:45 am]

BILLING CODE 1137–00–P

Federal Register

Tuesday,
September 14, 2004

Part II

The President

Presidential Determination No. 2004–45 of September 10, 2004—Continuation of the Exercise of Certain Authorities Under the Trading with the Enemy Act

Federal Register
Vol. 69, No. 177
Tuesday, September 14, 2004

Presidential Documents

Title 3—

The President

Presidential Determination No. 2004–45 of September 10, 2004

Continuation of the Exercise of Certain Authorities under the Trading with the Enemy Act

Memorandum for the Secretary of State [and] the Secretary of the Treasury

Under section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. App. 5(b) note), and a previous determination on September 12, 2003 (68 *Fed. Reg.* 54325), the exercise of certain authorities under the Trading with the Enemy Act is scheduled to terminate on September 14, 2004.

I hereby determine that the continuation for 1 year of the exercise of those authorities with respect to the applicable countries is in the national interest of the United States.

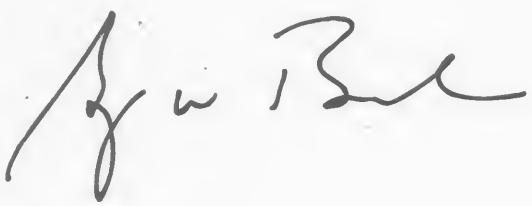
Therefore, pursuant to the authority vested in me by section 101(b) of Public Law 95–223, I continue for 1 year, until September 14, 2005, the exercise of those authorities with respect to countries affected by:

(1) the Foreign Assets Control Regulations, 31 C.F.R. part 500;

(2) the Transaction Control Regulations, 31 C.F.R. part 505; and

(3) the Cuban Assets Control Regulations, 31 C.F.R. part 515.

The Secretary of the Treasury is authorized and directed to publish this determination in the **Federal Register.**



THE WHITE HOUSE,
Washington, September 10, 2004.

[FR Doc. 04–20862
Filed 9–13–04; 11:06 am]
Billing code 4810–25–P

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session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html.*

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H.R. 5005/P.L. 108–303
Emergency Supplemental Appropriations for Disaster Relief Act, 2004 (Sept. 8, 2004; 118 Stat. 1124)
Last List August 18, 2004

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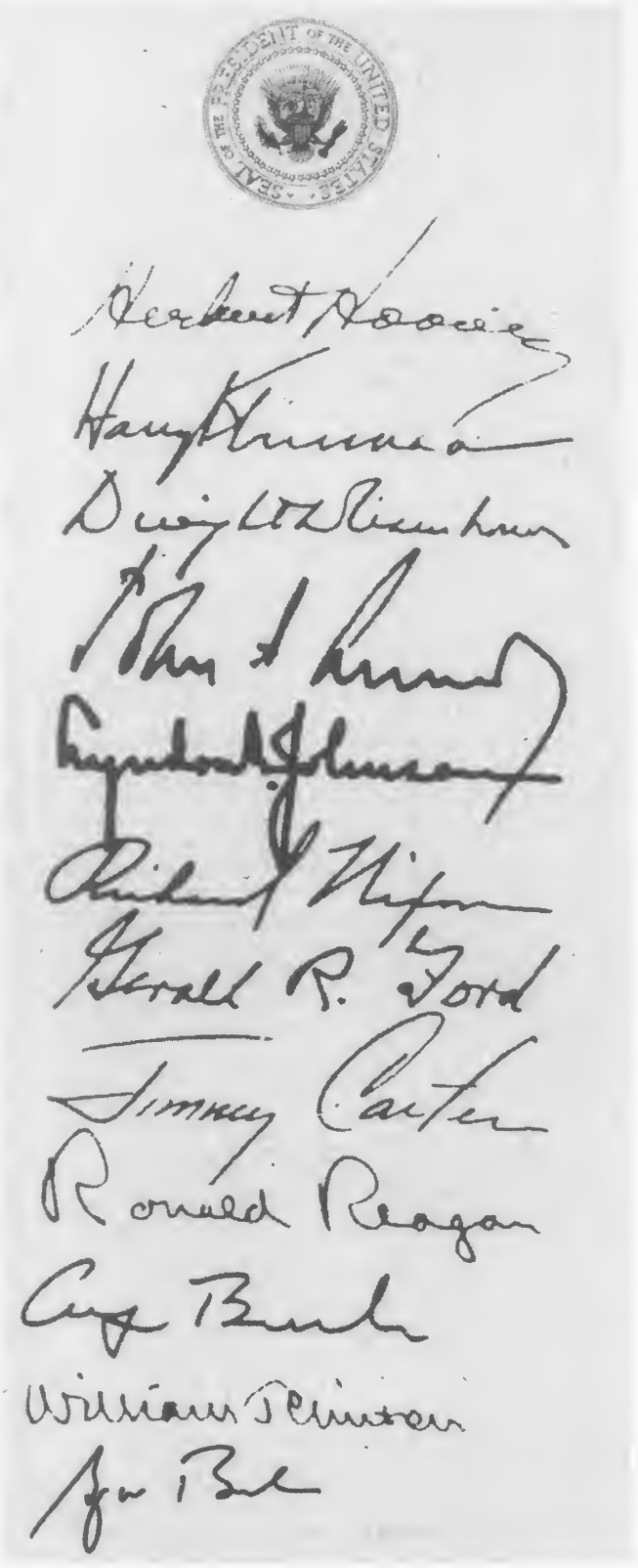

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